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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

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UNITED STATES AUTOMOBILE ) (  
ASSOCIATION

4

) ( CIVIL ACTION NO.

5

VS. ) ( 2:18-CV-245-JRG

6

) ( MARSHALL, TEXAS  
NOVEMBER 1, 2019

7

WELLS FARGO BANK, N.A. ) ( 8:53 A.M.

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TRANSCRIPT OF JURY TRIAL

10

MORNING SESSION

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BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,

12

UNITED STATES DISTRICT JUDGE

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19 Official Court Reporter  
20 United States District Court  
21 Eastern District of Texas  
22 Marshall Division  
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23 (Proceedings recorded by mechanical stenography, transcript  
24 produced on a CAT system.)  
25

P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Are the parties prepared to read into the record the items from the list of pre-admitted exhibits used during yesterday's portion of the trial?

MR. BUNT: Yes, Your Honor.

THE COURT: Please proceed.

MR. BUNT: The Plaintiffs used the following exhibits yesterday. Plaintiff's Exhibit No. 5, Plaintiff's Exhibit No. 14, Plaintiff's Exhibit 26, PX-28, PX-92, PX-162, PX-223, PX-329, PX-365, PX-376, PX-415, PX-417, PX-419, PX-487, PX-489, PX-1003, PX-1069, and PX-1083.

THE COURT: Any objection from Defendants?

MR. UNDERWOOD: No objection, Your Honor.

THE COURT: To Defendant -- does Defendant have a similar rendition to offer?

MR. UNDERWOOD: We do, Your Honor. We would add that DTX-611 and DTX-160 were also used.

THE COURT: All right. Any objection to that from Plaintiff?

MR. BUNT: No objection, Your Honor.

THE COURT: All right. Thank you, counsel.

Mr. Weinstein -- Mr. Weinstein, I'm sorry, you may

08:55:19 1 return to the witness stand. I remind you you remain under  
08:55:22 2 oath, sir.

08:55:23 3 MR. HILL: And, Your Honor, there was one issue I  
08:55:25 4 neglected to bring up in chambers that I intended to. I  
08:55:28 5 had hoped to use an easel this morning and also use the  
08:55:32 6 flip chart at some point.

08:55:33 7 THE COURT: All right.

08:55:33 8 MR. HILL: I was curious if I could go ahead and  
08:55:37 9 put these in position -- I brought these around so --

08:55:41 10 THE COURT: That's fine, Mr. Hill.

08:55:44 11 MR. HILL: Thank you.

08:55:44 12 THE COURT: I'd rather you do it now so I can see  
08:55:44 13 where you put it.

08:55:44 14 MR. HILL: All right. Do you want me to go ahead  
08:55:46 15 and put the board on it, Your Honor? Is this is this  
08:55:48 16 acceptable where this is?

08:55:49 17 THE COURT: Do you intend -- do you want the board  
08:55:52 18 on it?

08:55:52 19 MR. HILL: I'm going to go to the board straight  
08:55:55 20 away and it will probably be up most of the examination.

08:55:56 21 THE COURT: All right. Then if you'd like to put  
08:55:57 22 it up before the jury comes in, you can do that.

08:56:21 23 And you're welcome to stand in front of the board  
08:56:24 24 or to the side of it as long as you observe the typical  
08:56:27 25 arm's length rule.

08:56:29 1 MR. HILL: I'd also like to use the chart, Your  
08:56:32 2 Honor. Can I go ahead and advance it?

08:56:34 3 THE COURT: Yes, you may.

08:56:40 4 And, Mr. Bunt, when he finishes with his cross,  
08:56:43 5 let me know if you want to use either of these in your  
08:56:46 6 redirect, and, if so, we'll leave them there. If you  
08:56:50 7 don't, we'll take them down.

08:56:51 8 MR. BUNT: Thank you, Your Honor.

08:56:52 9 THE COURT: That is assuming you'll have redirect.

08:56:56 10 MR. BUNT: I'm guessing I will, Your Honor.

08:56:59 11 THE COURT: All right. Is there anything else  
08:57:00 12 before we bring the jury in?

08:57:04 13 MR. HILL: No, sir.

08:57:04 14 THE COURT: Let's bring in the jury, please,  
08:57:09 15 Mr. Johnston.

08:57:11 16 COURT SECURITY OFFICER: All rise.

08:57:11 17 (Jury in.)

08:57:31 18 THE COURT: Good morning, ladies and gentlemen of  
08:57:32 19 the jury, welcome back. Please have a seat.

08:57:35 20 I appreciate your being on time. We're starting a  
08:57:43 21 little late. Those are -- that's because of housekeeping  
08:57:45 22 matters I had to take up with counsel, but I appreciate you  
08:57:48 23 being here as I asked.

08:57:50 24 When we recessed for the evening yesterday,  
08:57:53 25 Mr. Roy Weinstein was on the witness stand. And Plaintiffs

08:57:55 1 had finished their direct examination. We'll proceed with  
08:58:00 2 the Defendant's cross-examination.

08:58:01 3 Mr. Hill, you may proceed.

08:58:02 4 MR. HILL: Thank you, Your Honor. May it please  
08:58:04 5 the Court.

08:58:04 6 Good morning, ladies and gentlemen.

08:58:04 7 ROY WEINSTEIN, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

08:58:04 8 CROSS-EXAMINATION

08:58:06 9 BY MR. HILL:

08:58:06 10 Q. Mr. Weinstein, good morning.

08:58:08 11 A. Good morning, sir.

08:58:09 12 Q. It's good to see you. Mr. Weinstein, I would like to  
08:58:12 13 start out this morning by just orienting ourselves a little  
08:58:15 14 bit with regard to the timeline. You've seen this timeline  
08:58:19 15 used earlier in the case, sir?

08:58:20 16 A. Yes, sir, I have.

08:58:21 17 Q. All right. There's a few days in particular I'd like  
08:58:23 18 to go over with you just to help us get our bearings for  
08:58:27 19 some of the testimony that you've offered in the case. Are  
08:58:29 20 you with me, sir?

08:58:30 21 A. Yes, sir.

08:58:30 22 Q. All right. So, Mr. Weinstein, you see we've got a  
08:58:32 23 period of time here, and, notably, we've got this date in  
08:58:35 24 2015, and that's when the patents -- the first patent in  
08:58:40 25 this case to issue, the '571 patent, issued; do you

08:58:43 1 understand that, sir?

08:58:44 2 A. I do.

08:58:44 3 Q. And that was in March of 2015, correct?

08:58:47 4 A. Yes, sir.

08:58:48 5 Q. Now, so March of 2015 when that first patent issues,  
08:58:52 6 you were testifying earlier about a date of a hypothetical  
08:58:56 7 negotiation. Do you recall that?

08:58:57 8 A. I do, sir.

08:58:57 9 Q. And what is the date of that hypothetical negotiation?

08:59:00 10 A. That was date of first infringement, which is around  
08:59:05 11 that time.

08:59:06 12 Q. Around this time here?

08:59:07 13 A. Yes, sir.

08:59:07 14 Q. So when we're talking about this hypothetical  
08:59:09 15 negotiation, we have to imagine that that went on in this  
08:59:13 16 2015 time frame, correct?

08:59:15 17 A. That's fair.

08:59:16 18 Q. All right. Now, a couple of other things about this  
08:59:18 19 chart or material that I want to go over with you. In  
08:59:21 20 particular, I want to focus on when Wells Fargo first  
08:59:26 21 launched its manual capture mobile deposit. That was in  
08:59:30 22 May of 2012. Were you aware of that, sir?

08:59:33 23 A. Yes, sir.

08:59:33 24 Q. All right. So in May of 2012, that is the first time  
08:59:39 25 that Wells Fargo had any type of mobile deposit product.

08:59:45 1 You understand that, right?

08:59:45 2 A. That's fair, sure.

08:59:47 3 Q. And when we talk about mobile deposit products, there's  
08:59:50 4 a lot of terms that have been used in this case, and I want  
08:59:52 5 to make sure that we don't confuse those terms today.

08:59:56 6 Now, mobile deposit -- or -- is often referred to  
09:00:01 7 as MRDC; is that right?

09:00:02 8 A. Yes, sir.

09:00:03 9 Q. And that stands for what, Mr. Weinstein?

09:00:06 10 A. Mobile remote deposit capture.

09:00:08 11 Q. Okay. So if we just say the word MRDC, or mobile  
09:00:13 12 deposit, that simply means the mobile deposit capability,  
09:00:18 13 right?

09:00:18 14 A. That's fair.

09:00:19 15 Q. It doesn't mean auto capture, necessarily, does it?

09:00:22 16 A. Sure.

09:00:22 17 Q. It can be manual capture, that's MRDC?

09:00:27 18 A. Yes, sir.

09:00:27 19 Q. And manual capture, MRDC, we know, certainly existed in  
09:00:34 20 May of 2012 when Wells Fargo released its own app using  
09:00:38 21 mobile deposit, right?

09:00:38 22 A. Yes, sir.

09:00:39 23 Q. All right. Now, in May of 2013, that's when Wells  
09:00:46 24 Fargo decides to add Mitek auto capture, and then -- but  
09:00:52 25 the product didn't actually come out at that time, did it?



09:00:54 1 A. May have been a little later.

09:00:56 2 Q. In fact, that was in May of 2014, right?

09:00:59 3 A. Yes.

09:01:00 4 Q. So in May of 2014, that's the first time we have a  
09:01:04 5 Wells Fargo mobile app that has mobile deposit, MRDC, plus  
09:01:14 6 the added feature of auto capture, correct?

09:01:17 7 A. Yes, sir.

09:01:18 8 Q. Now, you understand in this case, we believe there's  
09:01:20 9 more than one kind of auto capture; do you understand that?

09:01:23 10 A. I understand that's Wells Fargo's position, yes, sir.

09:01:25 11 Q. And we believe that Wells Fargo uses a type of auto  
09:01:30 12 capture that is different -- operates differently than the  
09:01:37 13 type of auto capture process that USAA has patented in the  
09:01:41 14 '571 patent?

09:01:41 15 A. I understand that, yes, sir.

09:01:43 16 Q. You understand that's our position?

09:01:45 17 A. Sure.

09:01:46 18 Q. Now, while we've got this -- this timeline up, let's  
09:01:50 19 look at these periods here that go after 2015.

09:01:58 20 So 2017 is when the '090 patent issued, right?

09:02:00 21 A. Yes, sir.

09:02:00 22 Q. And so what that means, Mr. Weinstein, is that there  
09:02:03 23 can be no infringement of this '090 patent until after it  
09:02:06 24 came into existence, right?

09:02:07 25 A. Yes, sir.

09:02:08 1 Q. Can't infringe a patent that hadn't issued, can you?

09:02:10 2 A. True.

09:02:11 3 Q. So all of this time period here when there's no patent  
09:02:15 4 protection in place, nobody can infringe these patents,  
09:02:17 5 right?

09:02:17 6 A. Yes, sir.

09:02:18 7 Q. Not Wells Fargo, not any other bank in the country,  
09:02:24 8 agreed?

09:02:24 9 A. That's true.

09:02:25 10 Q. Now, this lawsuit was filed in June of 2018; is that  
09:02:31 11 your understanding?

09:02:32 12 A. Yes, sir.

09:02:32 13 Q. And while we've got this up here, I want to make clear  
09:02:35 14 a couple of these earlier dates, too, that I know have been  
09:02:38 15 discussed.

09:02:39 16 Now, in particular, we heard in opening statements  
09:02:42 17 reference to the iPhone launching in June of 2007. Do you  
09:02:45 18 recall that?

09:02:46 19 A. I do.

09:02:46 20 Q. And there was some suggestion during the testimony of  
09:02:51 21 Mr. Bueche that it was -- had been said that Wells Fargo  
09:02:57 22 launched its iPhone app in July of 2007, and I believe the  
09:03:01 23 comment was people thought that was impossible. Do you  
09:03:04 24 recall that?

09:03:05 25 A. You know, I was here for the testimony. I don't recall

09:03:08 1 that specifically.

09:03:09 2 Q. All right. Well, what I wanted to point out with this,  
09:03:11 3 Mr. Weinstein, is that reference was made that this  
09:03:14 4 timeline said that Wells Fargo launched its iPhone app in  
09:03:19 5 '07. That's not what it says, is it?

09:03:21 6 A. What it says is July 2007, Wells Fargo launches mobile  
09:03:28 7 app.

09:03:28 8 Q. And you may have heard during Dr. Conte's testimony  
09:03:31 9 yesterday, Mr. Weinstein, that there were, in fact, mobile  
09:03:35 10 apps on mobile phones that predated the iPhone. Do you  
09:03:39 11 recall that?

09:03:39 12 A. I was here for the testimony, yes, sir.

09:03:41 13 Q. Okay. So suggesting that you launched a mobile app  
09:03:45 14 doesn't mean in July of 2007 -- doesn't mean you're saying  
09:03:49 15 that's an iPhone app, does it?

09:03:51 16 A. True.

09:03:51 17 Q. All right. Now, with those dates in mind,  
09:03:59 18 Mr. Weinstein, I want to talk a little bit about what your  
09:04:02 19 job in this case was with regard to your -- your damages  
09:04:07 20 calculations, okay?

09:04:08 21 A. Yes, sir.

09:04:09 22 Q. Now, in particular, I want to talk about this  
09:04:11 23 hypothetical negotiation exercise. You mentioned the  
09:04:17 24 hypothetical negotiation, right?

09:04:17 25 A. I did.

09:04:18 1 Q. And I want to make clear --

09:04:20 2 MR. BUNT: Your Honor, if we're not going to be  
09:04:21 3 using the demonstrative, can we take this down?

09:04:25 4 THE COURT: I think you can take it down and put  
09:04:26 5 it just in front of the --

09:04:29 6 MR. HILL: Podium?

09:04:30 7 THE COURT: -- podium.

09:04:32 8 MR. HILL: Okay. Thank you, Your Honor. I may  
09:04:33 9 make reference to it again in a few minutes, Your Honor.

09:04:36 10 THE COURT: That's fine. That way it will clear  
09:04:40 11 everybody's line-of-sight with the jury. You can leave the  
09:04:46 12 easel there, Mr. Hill.

09:04:48 13 MR. HILL: All right.

09:04:49 14 Q. (By Mr. Hill) Now, Mr. Weinstein, I'd like to talk  
09:04:53 15 about this hypothetical negotiation that you mentioned. In  
09:04:56 16 particular, Mr. Weinstein, let's talk about it conceptually  
09:05:00 17 of what it is. So this isn't an actual negotiation that  
09:05:04 18 occurred, correct?

09:05:04 19 A. No, sir.

09:05:05 20 Q. It's what we have to do -- it's what the jury has to do  
09:05:08 21 in their mind to determine what the parties, had they sat  
09:05:12 22 down in a room together in 2015, the date of the  
09:05:15 23 hypothetical negotiation, and had they negotiated a license  
09:05:20 24 between themselves, what would have been the result of  
09:05:24 25 that. Isn't that right?

09:05:26 1 A. Yes, sir.

09:05:27 2 Q. So, again, we're looking at March 2015, and we're going  
09:05:30 3 to assume that USAA, Wells Fargo met, sat in a room, and  
09:05:40 4 negotiated until they reached an agreement, correct?

09:05:44 5 A. Yes, sir.

09:05:44 6 Q. And they have to -- they do that negotiation in view of  
09:05:54 7 all the facts, agree?

09:05:55 8 A. Yes, sir.

09:05:56 9 Q. So they're going to know in that negotiation what came  
09:06:01 10 before the inventions that are in these patents, right?

09:06:03 11 A. Yes, sir.

09:06:03 12 Q. They're going to know the value of the mobile deposit  
09:06:09 13 system, the MRDC system that pre-existed these patents.  
09:06:14 14 They're going to know about all that value, aren't they?

09:06:16 15 A. They will.

09:06:17 16 Q. And they're going to have to try to put -- negotiate  
09:06:20 17 and arrive at an agreement that respects only the value of  
09:06:26 18 the invention that's actually contained in these patents,  
09:06:29 19 right?

09:06:29 20 A. Yeah. You said respects. That it accounts for the  
09:06:35 21 value of the invention. That -- that's fine, I agree with  
09:06:37 22 that.

09:06:37 23 Q. And so what our -- what our jury in this case has to do  
09:06:40 24 in the context of that hypothetical negotiation idea,  
09:06:42 25 Mr. Weinstein, is they have to put themselves in that room,

09:06:47 1 and they have to assume, based on all the evidence that  
09:06:50 2 they're going to hear in this case, what would the parties  
09:06:52 3 have agreed to based on everything we've seen about the  
09:06:58 4 market and what existed and what came before. You agree?

09:07:01 5 A. And what came after, yes, sir.

09:07:03 6 Q. And let me -- let's just be clear. They only have to  
09:07:09 7 perform that exercise if -- if they find that the patent is  
09:07:16 8 infringed, correct?

09:07:17 9 A. I agree with that, yes, sir.

09:07:18 10 Q. Because if the jury decides that the patents aren't  
09:07:21 11 infringed, if the jury, after hearing Wells Fargo's case --  
09:07:26 12 which we haven't had a chance to put on yet -- once they  
09:07:29 13 hear it, if they say, we believe the weight of the credible  
09:07:33 14 evidence is such that the Plaintiff hasn't carried their  
09:07:36 15 burden of proof to show us that these patents are  
09:07:39 16 infringed, then they don't entertain this hypothetical  
09:07:42 17 negotiation exercise, do they, sir?

09:07:44 18 A. Correct.

09:07:44 19 Q. And that's, in fact, a critical assumption that's built  
09:07:50 20 into your report, isn't it, Mr. Weinstein?

09:07:52 21 A. Yes. If there's no infringement, there are no damages.  
09:07:55 22 There has to be infringement to get to the hypothetical  
09:07:59 23 negotiation stage.

09:07:59 24 Q. And, Mr. Weinstein, you're not here to tell the jury  
09:08:05 25 anything about the technical issues or the liability issues

09:08:08 1 on infringement, are you, sir?

09:08:10 2 A. Correct.

09:08:11 3 Q. Your task in this case was to assume, not weigh the  
09:08:17 4 evidence, not consider the evidence of infringement or  
09:08:20 5 non-infringement, and make your own conclusion about it,  
09:08:23 6 your task was to simply assume that there was infringement.

09:08:28 7 Am I right?

09:08:29 8 A. Yes, sir.

09:08:29 9 Q. And I want to be clear about that. Nothing about your  
09:08:34 10 testimony or your report should suggest to the jury that  
09:08:38 11 you have looked at any technical evidence or weighed any  
09:08:42 12 evidence and reached a conclusion of your own about whether  
09:08:45 13 these patents are infringed; isn't that right?

09:08:47 14 A. That is correct, sir. I assume they're infringed and  
09:08:51 15 go from there.

09:08:52 16 Q. And you didn't perform any way and you're not here  
09:08:56 17 expressing any personal belief that you've looked at  
09:09:00 18 evidence and decided infringement, are you, sir?

09:09:02 19 A. Yes, sir, that's correct.

09:09:03 20 Q. Now, let's talk about that hypothetical negotiation a  
09:09:09 21 little more, Mr. Weinstein.

09:09:09 22 So at this hypothetical negotiation, the parties  
09:09:14 23 would be negotiating over these two specific patents,  
09:09:18 24 correct?

09:09:18 25 A. Yes, sir.

09:09:18 1 Q. And they would be looking at the fact that these  
09:09:23 2 patents claim a specific way of performing auto capture.  
09:09:27 3 You agree, sir?

09:09:28 4 A. I do.

09:09:29 5 Q. And they're not negotiating -- the parties in this  
09:09:32 6 hypothetical negotiation, they're not negotiating the value  
09:09:35 7 of mobile banking, generally, right?

09:09:40 8 A. Well, they're -- they're -- they're negotiating over  
09:09:44 9 the -- the contribution made by the -- by the patents. And  
09:09:49 10 to the extent that affects the value of mobile -- mobile  
09:09:52 11 banking, that's a related concept.

09:09:56 12 Q. Okay. Well, but they're not trying to arrive in that  
09:10:00 13 room at -- their conclusion of their negotiation is not  
09:10:04 14 going to be a conclusion on the value of mobile banking, is  
09:10:07 15 it?

09:10:07 16 A. Well, ultimately, that's correct. Ultimately, they  
09:10:11 17 want to arrive at an amount that reflects fair payment for  
09:10:17 18 use of the patented technology.

09:10:18 19 Q. And the task in that hypothetical negotiation is not to  
09:10:22 20 figure out the value of MRDC as a whole, is it?

09:10:26 21 A. I don't quite agree with that, to the extent that  
09:10:32 22 figuring that out may relate to how they get to their  
09:10:35 23 conclusion about fair payment.

09:10:37 24 Q. Well, let's say it this way: The ultimate goal of that  
09:10:41 25 negotiation, the ultimate decision they have to reach about



09:10:44 1 the value of these patents, that is not the same thing as  
09:10:47 2 the value of MRDC, is it?

09:10:50 3 A. That, I agree with, yes, sir.

09:10:51 4 Q. And the same would be true, they wouldn't end that  
09:10:58 5 negotiation by accepting the value of any particular part  
09:11:00 6 of MRDC that may have come before, would they?

09:11:03 7 A. True. Their task as negotiators is to figure out the  
09:11:09 8 contribution that Wells Fargo received from these patents.

09:11:12 9 Q. And that means they can't -- they're not going to  
09:11:17 10 agree -- those parties aren't going to agree that the  
09:11:21 11 proper royalty in this case is the value of the respective  
09:11:24 12 parts that make up MRDC, are they, sir?

09:11:26 13 A. That's true.

09:11:27 14 Q. And that's what the law calls an apportionment factor  
09:11:31 15 or apportionment consideration; wouldn't you agree?

09:11:34 16 A. We're getting close to apportionment, yes, sir.

09:11:36 17 Q. So what we -- what they have to do -- part of the task  
09:11:39 18 in that negotiation is they have to figure out, okay,  
09:11:42 19 what's the cell phone itself worth? What's the Internet  
09:11:45 20 worth? What's the processor worth? What are the servers  
09:11:48 21 worth? What's the bank systems that clear these checks  
09:11:51 22 worth?

09:11:52 23 And they have to try to separate what's the value  
09:11:55 24 of manual deposit. They have to try to separate all of  
09:12:00 25 those unpatented features, those unclaimed features, those

09:12:04 1 things that existed before, and they have to try to  
09:12:08 2 identify the specific value associated with this type of  
09:12:19 3 auto capture that's been claimed by USAA, agree?

09:12:21 4 A. I do.

09:12:22 5 Q. And if we -- just to kind of give us a poor, I'm sure,  
09:12:27 6 but a graphical representation of that, Mr. Weinstein, if  
09:12:30 7 we have a whole -- we'll call that a whole -- a w-h-o-l-e,  
09:12:41 8 okay -- the entirety of something --

09:12:41 9 A. Yes, sir.

09:12:47 10 Q. -- and we're going to call this MRDC -- and, again,  
09:12:49 11 MRDC just means the mobile deposit system, right?

09:12:53 12 A. Yes, sir.

09:12:53 13 Q. All right. Means manual. It means all the stuff that  
09:12:56 14 went into manual, all the back-end processing, all the  
09:13:03 15 things that we know existed before these patents that  
09:13:06 16 aren't these patents, right?

09:13:07 17 A. Yes.

09:13:07 18 Q. All right. And so if that's the whole of MRDC, and we  
09:13:11 19 know at some point in time auto capture was injected, we  
09:13:15 20 have to figure out what portion of this whole auto capture  
09:13:23 21 consists of, correct?

09:13:28 22 A. That's true, yes, sir.

09:13:30 23 Q. And that's what we're trying to value in this  
09:13:32 24 hypothetical negotiation?

09:13:32 25 A. That's correct.

09:13:53 1 Q. Now, Mr. Weinstein, I'd like to put up a slide that you  
09:13:57 2 used yesterday with the jury and talk about it a little bit  
09:14:01 3 in the context of the hypothetical negotiation.

09:14:01 4 MR. HILL: Can we see PDX-4.35, please?

09:14:14 5 Q. (By Mr. Hill) Now, Mr. Weinstein, do you recall  
09:14:16 6 showing PDX-4.35 yesterday to the jury?

09:14:20 7 A. I do.

09:14:21 8 Q. In particular, Mr. Weinstein, I want to point out a  
09:14:24 9 couple of things about this slide.

09:14:26 10 So this slide was your attempt to add up the value  
09:14:31 11 of MRDC, correct?

09:14:32 12 A. Yes, sir, that's the -- the first step.

09:14:35 13 Q. And if we look at the title of the slide, though, this  
09:14:38 14 says the Quantifiable Benefits of Auto-Capture MRDC. Do  
09:14:46 15 you see that right there --

09:14:46 16 A. I do.

09:14:47 17 Q. -- auto capture?

09:14:48 18 All right. But I listened to your testimony  
09:14:52 19 yesterday, Mr. Weinstein, and you were asked a direct  
09:14:54 20 question by Mr. Bunt, and you answered it -- you answered  
09:14:57 21 it straightforwardly. I'd like to present that to you,  
09:15:00 22 just so we're clear about what's on this slide.

09:15:02 23 So you were asked yesterday -- and we can show it  
09:15:05 24 to the jury -- this is from your trial transcript from  
09:15:13 25 yesterday:

09:15:13 1 So are the USAA patents -- and you were asked this  
09:15:22 2 question in the context of the information on the slide we  
09:15:25 3 were just looking at.

09:15:27 4 So are the USAA patents responsible for all of the  
09:15:31 5 benefits that you have just quantified?

09:15:34 6 And your answer was: No, sir.

09:15:37 7 You agree with that?

09:15:38 8 A. Absolutely.

09:15:38 9 Q. All right. And so you were then asked: So how did you  
09:15:41 10 go about figuring out what was attributable to the  
09:15:45 11 United -- to the USAA patents?

09:15:47 12 And you said: Right. As I said earlier, I start  
09:15:52 13 with the benefits associated with MRDC, and that's what's  
09:15:57 14 shown on the left-hand side of this slide.

09:15:59 15 Now, you had another slide later that contained  
09:16:01 16 this same information. That's what you were referring to?

09:16:03 17 A. Yes, sir.

09:16:04 18 Q. All right.

09:16:05 19 MR. HILL: So let's go back to the P -- PDX-4.35,  
09:16:11 20 please, Mr. Barnes.

09:16:13 21 Q. (By Mr. Hill) So just to be clear, we know from your  
09:16:15 22 testimony yesterday, as you told us, this is not the  
09:16:24 23 benefits associated with these patents, correct?

09:16:25 24 A. Right. That's -- that's the big circle that you drew.

09:16:28 25 Q. And, in fact, we also know -- right, that's the big

09:16:35 1 circle that I drew here; is that what you're referring to?

09:16:37 2 A. Right. It includes the benefits.

09:16:38 3 Q. All right. And what we know is that you started with  
09:16:40 4 the benefits associated with what was known before, which  
09:16:44 5 is MRDC, correct?

09:16:44 6 A. Yes, sir.

09:16:45 7 Q. And that's what this number right here you say  
09:16:49 8 represents?

09:16:49 9 A. Correct.

09:16:50 10 Q. All right. I want to talk a little bit about that  
09:16:53 11 number, and I also want to talk about how -- though the  
09:16:56 12 slide calls this auto-capture-enabled MRDC, what this  
09:17:00 13 really is -- is just the value of MRDC, agree?

09:17:07 14 A. No.

09:17:11 15 Q. Because this is the value that existed in the MRDC  
09:17:13 16 system independent of auto capture, isn't it,  
09:17:17 17 Mr. Weinstein?

09:17:17 18 A. No, because -- because auto capture is in there during  
09:17:20 19 this time period.

09:17:20 20 Q. Well, let's -- let's talk about that a little bit.

09:17:22 21 I want to look, Mr. Weinstein, at some of the  
09:17:36 22 documents that you reviewed with the jury in support of  
09:17:38 23 your conclusion that this number you came up with included  
09:17:41 24 the benefits of auto capture, okay?

09:17:44 25 A. Sure.

09:17:45 1 Q. And let's start out with -- you claimed there were  
09:17:56 2 three components to that number.

09:17:58 3 MR. HILL: Let's see 435 again, please,  
09:18:01 4 Mr. Barnes.

09:18:04 5 Q. (By Mr. Hill) There were three components here, right,  
09:18:15 6 one, two, three? Did I get that correct?

09:18:19 7 A. You did.

09:18:19 8 Q. And those are the three components that you set out to  
09:18:22 9 value which you say is the value of auto capture and MRDC  
09:18:28 10 and which I say is just the value of MRDC. You understand  
09:18:33 11 that's the debate we're having this morning?

09:18:35 12 A. I'm not having a debate.

09:18:35 13 Q. Okay.

09:18:38 14 A. I'm fine. Thank you.

09:18:38 15 Q. All right. So let's look at this first category, cost  
09:18:41 16 savings.

09:18:45 17 MR. HILL: Mr. Barnes, can we see --

09:18:48 18 Q. (By Mr. Hill) I want to look at what you looked at to  
09:18:51 19 arrive at your first category, what information you looked  
09:18:53 20 at.

09:18:54 21 MR. HILL: So let's take a look at PDX-4. --  
09:19:01 22 4.19 -- 4.19, Mr. Barnes.

09:19:03 23 Q. (By Mr. Hill) Now, this, again, is another of the  
09:19:05 24 slides that you showed the jury yesterday, correct?

09:19:07 25 A. Yes, sir.

09:19:07 1 Q. And I want to look specifically at what this  
09:19:11 2 represents. This is a Wells Fargo document, correct?

09:19:14 3 A. It is.

09:19:16 4 Q. It's in evidence as Plaintiff's Exhibit 415. And let's  
09:19:20 5 remember our timeline, Mr. Weinstein.

09:19:23 6 When did the first of these patents issue?

09:19:25 7 A. 2015.

09:19:28 8 Q. Okay. Well, this is a document from 2011, agree?

09:19:34 9 A. Agree.

09:19:35 10 Q. All right. And this is a document that, frankly,  
09:19:38 11 predates Wells Fargo's introduction of any type of capture?

09:19:45 12 A. True.

09:19:46 13 Q. Wells Fargo didn't even have mobile deposit of any kind  
09:19:49 14 in 2011, did they?

09:19:50 15 A. Right. This is a planning document.

09:19:52 16 Q. And, in fact, if we look all the way back to 2011,  
09:19:57 17 nobody on earth had auto capture in 2011, did they?

09:20:01 18 A. True.

09:20:01 19 Q. And so in this document, Wells Fargo discusses cost  
09:20:09 20 savings, and they're talking about key benefits to Wells  
09:20:12 21 Fargo include cost savings from moving deposits out of the  
09:20:15 22 store and the ATM channels.

09:20:18 23 Mr. Weinstein, we know that in 2011, this document  
09:20:21 24 can only be discussing one thing, and that's something that  
09:20:24 25 existed. That would have been mobile deposit, MRDC,

09:20:30 1 correct?

09:20:30 2 A. That's fair. That's what the document is talking  
09:20:33 3 about.

09:20:33 4 Q. This document cannot show us anything about the value  
09:20:37 5 of auto capture because auto capture didn't exist; isn't  
09:20:37 6 that right?

09:20:41 7 A. As far as this document is concerned, that's true.

09:20:44 8 Q. Now, you heard yesterday -- well, I tell you what,  
09:20:57 9 let's look at another document. Let's look at another  
09:21:00 10 document you pointed to in the context of cost savings,  
09:21:03 11 okay?

09:21:03 12 MR. HILL: Let's look at PDX-4.20, please,  
09:21:07 13 Mr. Barnes.

09:21:09 14 Q. (By Mr. Hill) All right. Here we have another  
09:21:11 15 document that you pointed to as reflecting the value of,  
09:21:14 16 you say, auto capture MRDC. I say just MRDC.

09:21:21 17 What's the date of this document, Mr. Weinstein?

09:21:23 18 A. November 2010.

09:21:25 19 Q. And, again, this is another Wells Fargo document,  
09:21:28 20 correct?

09:21:28 21 A. It is.

09:21:29 22 Q. And it's discussing, as it says in the part you've  
09:21:33 23 highlighted here, MRDC, correct?

09:21:37 24 A. Correct.

09:21:38 25 Q. And, again, Plaintiff's Exhibit 1069, and if we look at



09:21:43 1 our timeline, we know the same is true for this document.

09:21:47 2 It's from a point in time when nobody on the planet had  
09:21:51 3 auto capture?

09:21:52 4 A. As far as I know, that's correct.

09:21:53 5 Q. Certainly wasn't a commercial embodiment, it wasn't in  
09:21:57 6 the market, was it, sir?

09:21:58 7 A. That's a good way to put it.

09:22:00 8 Q. And more specifically, Mr. Weinstein, what we know is

09:22:10 9 not only in this time period before the 2015 patent and

09:22:17 10 certainly before even USAA had come out with auto

09:22:20 11 capture -- you know, USAA didn't launch auto capture until

09:22:24 12 2013, you understand that, don't you, sir?

09:22:26 13 A. I do.

09:22:26 14 Q. We know that in that time frame before that, nobody was

09:22:34 15 using auto capture?

09:22:37 16 A. As far as I know.

09:22:38 17 Q. And more particularly we know that nobody was using

09:22:44 18 USAA's specific way of doing auto capture, right?

09:22:50 19 A. As far as I know, that's true.

09:22:52 20 Q. So what we have is a document from a point in time when

09:22:55 21 not only did USAA not have on the market its way, its

09:23:03 22 specific version of auto capture, nobody had another

09:23:07 23 version of auto capture out there either, did they?

09:23:08 24 A. As far as I know, that's true.

09:23:10 25 Q. So when they, in 2010, inside Wells Fargo, are

09:23:16 1 evaluating the potential of MRDC, they're evaluating the  
09:23:20 2 potential of the world they know, aren't they?

09:23:23 3 A. Sure.

09:23:23 4 Q. And they're evaluating the potential of a mobile remote  
09:23:30 5 deposit world, which at that point in time, all anybody had  
09:23:34 6 ever seen was manual?

09:23:36 7 A. Correct.

09:23:37 8 Q. Now, Mr. Weinstein, I want to look at one other thing  
09:23:47 9 you showed to indicate what you said was the cost savings  
09:23:51 10 associated with MRDC.

09:23:56 11 MR. HILL: I want to look at PDX-4.21, if we can.

09:24:01 12 Q. (By Mr. Hill) Yesterday, you made reference to this  
09:24:04 13 information in the context of cost savings, agree?

09:24:06 14 A. I did.

09:24:07 15 Q. And this is Plaintiff's Exhibit 1003. It's an excerpt  
09:24:11 16 from a Bank of America document; isn't that true?

09:24:13 17 A. Correct.

09:24:13 18 Q. And the reason you put this up, Mr. Weinstein, is you  
09:24:17 19 put it up to try to support a theory on cost savings you  
09:24:22 20 gave where you told the jury that had Wells Fargo not had  
09:24:30 21 auto capture available to it, USAA's specific way of auto  
09:24:34 22 capture available to it, Wells Fargo would have had to  
09:24:37 23 build, I don't know, a hundred plus more branches. Do you  
09:24:41 24 recall that?

09:24:42 25 A. Well, I -- I didn't put it quite that way. The number

09:24:45 1 is 184 branches that they didn't have to build because they  
09:24:49 2 had the benefit of auto capture mobile deposit.

09:24:53 3 Q. Now, I want to dig into that a little bit with this  
09:24:56 4 document. First off, this is Bank of America, right?

09:24:58 5 A. It is.

09:24:59 6 Q. This is Bank of America information?

09:25:02 7 A. Correct.

09:25:03 8 Q. We all agree Bank of America isn't Wells Fargo, right?

09:25:06 9 A. We do.

09:25:07 10 Q. But this is the information you used as your starting  
09:25:13 11 point to suggest that part of the value of auto capture  
09:25:19 12 MRDC, I say it's just MRDC, auto capture MRDC, would be  
09:25:28 13 \$276 million of extra building expense, correct?

09:25:32 14 A. Well, as you said in your question, that's a starting  
09:25:34 15 point. That's correct.

09:25:36 16 Q. But in your report, you actually present data for the  
09:25:39 17 number of checks that Wells Fargo processes by mobile  
09:25:42 18 deposit, don't you?

09:25:43 19 A. I believe I do.

09:25:45 20 Q. All right. Let's -- let's --

09:25:46 21 MR. HILL: Let's take that down, Mr. Barnes.

09:25:51 22 Q. (By Mr. Hill) I want to look at some of that data. Do  
09:25:53 23 you have a copy of your report there with you,  
09:25:55 24 Mr. Weinstein?

09:25:55 25 A. If it's -- if it's in one of those notebooks, maybe.

09:25:59 1 Q. Those aren't my notebooks, so I can't -- I can't tell  
09:26:02 2 you. Those are the ones --

09:26:03 3 A. I didn't bring anything up here with me.

09:26:07 4 Q. All right. Will you look there and see if you have a  
09:26:09 5 copy of your amended report, and also the schedules that go  
09:26:12 6 with it, Mr. Weinstein?

09:26:17 7 A. I do not believe there's a copy of --

09:26:20 8 Q. Okay.

09:26:20 9 MR. HILL: Your Honor, may I approach and provide  
09:26:22 10 the witness a portion of his report?

09:26:24 11 THE COURT: You may.

09:26:25 12 MR. HILL: Thank you.

09:26:26 13 THE COURT: I assume opposing counsel has the same  
09:26:28 14 thing. I want to make sure everybody's looking on the same  
09:26:31 15 piece of paper.

09:26:40 16 THE WITNESS: Thank you, sir.

09:26:42 17 THE COURT: All right. Let's proceed.

09:26:43 18 Q. (By Mr. Hill) Now, Mr. Weinstein, in your report work  
09:26:46 19 that you did in this case, you produced a document called  
09:26:48 20 Supplemental Exhibit 9. Do you recall that?

09:26:51 21 A. I do.

09:26:51 22 Q. And this Supplemental Exhibit 9 was your attempt to  
09:26:56 23 show what you say are the branch construction cost savings  
09:27:00 24 for Wells Fargo because of the use of USAA's specific  
09:27:10 25 version of auto capture. Do you understand?

09:27:12 1 A. I do.

09:27:14 2 Q. And you agree that's what it represents?

09:27:18 3 A. It's a starting point, yes, sir.

09:27:20 4 Q. Now, if we look at supplemental Exhibit 9 where you did  
09:27:32 5 your work -- we'll put it here in front of the jury --

09:27:44 6 here's what we see. What you did was, is you calculated in  
09:27:48 7 this column the number of mobile deposits, correct?

09:28:00 8 A. Well, it's -- it's -- as it says, it's number of --  
09:28:03 9 number of mobile deposits less new mobile deposits.

09:28:05 10 Q. Right. And --

09:28:07 11 A. That's correct.

09:28:08 12 Q. What you did from there is you calculated how many of  
09:28:13 13 those deposits -- and, again, this isn't dollars. These  
09:28:16 14 are numbers, right, this is accounting?

09:28:18 15 A. Yes, sir.

09:28:19 16 Q. Okay. You totaled up how many of those deposits you  
09:28:24 17 said in any given year would have to be shifted to a  
09:28:26 18 branch?

09:28:27 19 A. Correct. And that comes from Wells Fargo information  
09:28:31 20 in Column 2, correct.

09:28:32 21 Q. And -- and when we say shifted to a branch, you're  
09:28:36 22 talking about teller deposits, aren't you?

09:28:38 23 A. Yes, sir.

09:28:38 24 Q. Walk into the bank, hand it to the person across the  
09:28:41 25 counter?

09:28:42 1 A. Yes, sir.

09:28:42 2 Q. And if we take the highest year, let's just take the  
09:28:46 3 highest year that you looked at, what year would that be?

09:28:48 4 A. 2018.

09:28:49 5 Q. 2018. Okay. So in 2018, you said there'd be, what is  
09:28:53 6 that, roughly 26 million --

09:28:54 7 A. Correct.

09:28:55 8 Q. -- of deposits --

09:28:56 9 A. Correct.

09:28:59 10 Q. -- that because of the absence of the specific way that  
09:29:04 11 USAA has claimed in its patents of doing auto capture that  
09:29:08 12 people would have to -- if that wasn't available to Wells  
09:29:13 13 Fargo, 26 million of those deposits would have to walk into  
09:29:16 14 the bank and go across the counter, right?

09:29:18 15 A. Correct.

09:29:19 16 Q. All right. I want to do a little math about that,  
09:29:26 17 Mr. Weinstein. Those checks aren't going to all hit one  
09:29:30 18 branch, are they?

09:29:31 19 A. No, they're going to hit -- hit multiple branches.

09:29:34 20 Q. They're going to be distributed across Wells Fargo  
09:29:37 21 branches, right?

09:29:37 22 A. That's fair.

09:29:39 23 Q. And how many working days are in a year, Mr. Weinstein?

09:29:41 24 A. Well, there are 365 days in a year, but I guess I do 52  
09:29:47 25 weeks times maybe five days a week would be 260.

09:29:52 1 Q. I've always heard it was 251. Is that a fair number to  
09:29:57 2 go with?

09:29:57 3 A. Close enough.

09:29:58 4 Q. All right. So if we have 251 days in a working year --  
09:30:14 5 Mr. Weinstein, I've lost my marker. I'm bad about that.

09:30:22 6 MR. HILL: I apologize, Your Honor.

09:30:23 7 THE COURT: Just find it and don't tell us about  
09:30:24 8 it.

09:30:25 9 Q. (By Mr. Hill) All right. We have -- you say  
09:30:27 10 26 million checks are going to come over the counter in  
09:30:32 11 '18, right?

09:30:32 12 A. Yes, sir.

09:30:33 13 Q. All right. 26 million, and there's 251 days in a  
09:30:36 14 working year, right?

09:30:37 15 A. I'm fine with that.

09:30:38 16 Q. Do you know what that works out to?

09:30:44 17 A. I don't.

09:30:45 18 Q. Okay. I had to use a calculator myself, Mr. Weinstein,  
09:30:48 19 and I show it works out to 103,586.

09:31:05 20 And let's talk about what that would represent.

09:31:08 21 That would be the number -- oh, and I made a mistake here,  
09:31:14 22 Mr. Weinstein.

09:31:16 23 This is the number of checks, right? It's not a  
09:31:20 24 dollar value?

09:31:21 25 A. Right. We agree with that.

09:31:22 1 Q. Yeah, that's the number of checks. My mistake. That  
09:31:26 2 would be the number of checks -- additional checks for 2018  
09:31:32 3 under your model per day, per working day?

09:31:34 4 A. Sure.

09:31:35 5 Q. Because what we've got here is number of checks to  
09:31:45 6 teller, and we divided that by working days, agree?

09:31:54 7 A. Agree.

09:31:55 8 Q. And so this would be checks per day.

09:32:03 9 Now, do you know how many branches Wells Fargo  
09:32:08 10 has?

09:32:09 11 A. Slips my mind.

09:32:13 12 Q. You looked at that information --

09:32:14 13 A. I did.

09:32:15 14 Q. -- in the course of your work? Does it refresh your  
09:32:19 15 memory if I suggest to you, Mr. Weinstein, that it's about  
09:32:22 16 5,500 branches nationwide?

09:32:23 17 A. At least, yes, sir.

09:32:24 18 Q. You don't quarrel with that number, do you?

09:32:27 19 A. I don't.

09:32:28 20 Q. Okay. So we've got that many checks a day, and we're  
09:32:31 21 going to distribute them across 5,500 branches. Do you  
09:32:42 22 know what that's going to give us?

09:32:43 23 A. Not out of my head, no.

09:32:47 24 Q. All right. I did that with a calculator, too,  
09:32:49 25 Mr. Weinstein, and it comes out to 18 -- some change. So



09:32:53 1 we're going to call it 19, okay? And that would be 19

09:32:58 2 checks per day per branch, right?

09:33:08 3 A. It looks about right, yes, sir.

09:33:11 4 Q. Okay. So 19 checks per day per branch, agree? Checks  
09:33:23 5 per day per branch?

09:33:25 6 A. Yeah, I accept your math. That's fine.

09:33:29 7 Q. How many hours in a working banking day? We assume  
09:33:33 8 eight hours?

09:33:33 9 A. That's fair.

09:33:34 10 Q. What's 19 divided by 8?

09:33:36 11 A. So that is 2.375.

09:33:39 12 Q. Okay. So give or take two or three, we say divided  
09:33:48 13 by -- this was divided by 8 hours, gives us two to three  
09:34:00 14 extra checks per hour.

09:34:12 15 Math look right, Mr. Weinstein?

09:34:14 16 A. I'm fine with your math.

09:34:15 17 Q. Now, have you been in a local bank branch lately,  
09:34:20 18 Mr. Weinstein?

09:34:20 19 A. Well, if you mean local market, Texas, no, sir. But  
09:34:24 20 local for me is Los Angeles.

09:34:25 21 Q. All right.

09:34:25 22 A. And the answer there is yes.

09:34:29 23 Q. Was it a busy place, or was it kind of slow?

09:34:32 24 A. It's -- depends on which bank. Some are definitely  
09:34:37 25 kind of slow, and others, you have to wait in line.

09:34:40 1 Q. Does it seem unreasonable, Mr. Weinstein, to think a  
09:34:44 2 branch could handle two or three additional checks per  
09:34:47 3 hour?

09:34:47 4 A. Yeah, that -- that's certainly not unreasonable. But  
09:34:51 5 that's not the issue.

09:34:52 6 Q. And, Mr. Weinstein, don't you think that before a bank  
09:34:55 7 like Wells Fargo would spend \$276 million building new  
09:35:02 8 branches, they might do a capacity study? Seem reasonable?

09:35:06 9 A. Actually, they -- they have done capacity studies. And  
09:35:10 10 what they're doing is closing banks and reducing the number  
09:35:15 11 of branches.

09:35:15 12 Q. Because, frankly, they don't need that many branches to  
09:35:19 13 service their customers at this point in time, do they?

09:35:21 14 A. And that's why we're here.

09:35:23 15 Q. And --

09:35:24 16 MR. HILL: Objection, nonresponsive, Your Honor.  
09:35:30 17 I move to strike the sidebar comment from Mr. Weinstein.

09:35:35 18 THE COURT: I'll overrule that, Mr. Hill. I don't  
09:35:37 19 think it's non-responsive in light of your statement in the  
09:35:40 20 form of a question.

09:35:42 21 Q. (By Mr. Hill) Mr. Weinstein, we know Wells Fargo is  
09:35:47 22 not out there building new branches right now, correct?

09:35:50 23 A. I -- I agree. They're actually closing branches.

09:35:52 24 Q. And we know with their existing branch infrastructure,  
09:35:55 25 if we take the number of checks for a given year that you

09:35:59 1 say would have to go through that additional -- that

09:36:01 2 existing branch infrastructure, it works out to two to

09:36:04 3 three checks per hour?

09:36:06 4 A. Yeah. I'm fine with your math.

09:36:08 5 Q. Now, you didn't do a capacity study as part of your

09:36:14 6 work in this case, did you, Mr. Weinstein?

09:36:15 7 A. Well, I relied on -- on Wells Fargo's actual conduct in

09:36:19 8 that regard. I didn't do my own. I relied on Wells Fargo.

09:36:22 9 Q. And, Mr. Weinstein, your math that you used to suggest

09:36:29 10 that this \$276 million input should be made to your cost

09:36:33 11 savings portion of your report, your math on that -- your

09:36:38 12 calculation did not include an assumption that any of this

09:36:40 13 additional check traffic might go through the ATM channels,  
09:36:43 14 did it?

09:36:44 15 A. That's true.

09:36:46 16 Q. So we don't know -- when you say 26 million checks

09:36:51 17 would have gone through a teller, we don't know that that's  
09:36:55 18 true, do we?

09:36:55 19 A. No, that's -- that's incorrect. My math is based on

09:37:00 20 Wells Fargo's own information about the percentage of

09:37:02 21 deposits they get, ATM versus teller.

09:37:05 22 Q. I didn't mean to cut you off, sir.

09:37:08 23 A. I'm sorry.

09:37:08 24 Q. So, Mr. Weinstein, in your 26 million, you did not take

09:37:12 25 account of how many of those checks would go through the

09:37:16 1 ATM channel, did you, sir?

09:37:17 2 A. That's incorrect.

09:37:18 3 Q. Now, the other thing, Mr. Weinstein -- let me ask this:

09:37:25 4 You know, instead of building -- Wells Fargo as a company  
09:37:29 5 might look at this additional check volume, two to three  
09:37:32 6 per hour per branch, and think, you know, I bet we can  
09:37:35 7 handle that. Might conclude that. Seem like a reasonable  
09:37:40 8 conclusion, wouldn't it?

09:37:41 9 A. There's no question that they could handle that  
09:37:46 10 additional number of deposits. The fact is, they don't  
09:37:48 11 want to handle them in a bank.

09:37:51 12 Q. And, Mr. Weinstein, another thing they might have  
09:37:55 13 decided is, well, if we don't want to handle those things  
09:37:59 14 through a bank -- as you say, we don't want to handle these  
09:38:03 15 through a bank, then let's just use manual capture. That  
09:38:11 16 would take them out of the banking teller route, wouldn't  
09:38:14 17 it?

09:38:15 18 A. It would.

09:38:15 19 Q. It would put them right back into the MRDC route,  
09:38:18 20 wouldn't it?

09:38:19 21 A. It would.

09:38:19 22 Q. And the cost savings that come from the MRDC route  
09:38:22 23 would accrue just the same in that manual capture context  
09:38:26 24 as they do in that auto capture context, wouldn't they,  
09:38:34 25 Mr. Weinstein?

09:38:34 1 A. No, sir, that's not correct.

09:38:36 2 Q. Now, let's take a look, Mr. Weinstein -- so you don't  
09:38:38 3 believe that Wells Fargo, rather than say let's spend  
09:38:43 4 \$276 million building branches, might say let's keep using  
09:38:45 5 what we've been using that allows mobile deposit. Let's  
09:38:49 6 just do manual capture?

09:38:51 7 A. Is there a question?

09:38:56 8 Q. Yes, sir.

09:38:56 9 A. What's the question?

09:38:57 10 Q. The question is: That could be a reasonable calculus  
09:39:01 11 for Wells Fargo?

09:39:01 12 A. That -- that's reasonable only if manual capture works  
09:39:05 13 and is acceptable to consumers.

09:39:08 14 Q. I'm going to put a pin in that, Mr. Weinstein. That is  
09:39:11 15 only reasonable if manual capture works. That's what  
09:39:16 16 you're saying?

09:39:16 17 A. And is acceptable to consumers during the damage period  
09:39:21 18 relative to the use of the patents-in-suit.

09:39:24 19 Q. And, again, our damage period is when?

09:39:26 20 A. December 2016 until roughly today.

09:39:31 21 Q. So from here to here, right?

09:39:34 22 A. I can't see where you're pointing.

09:39:37 23 Q. Yes, sir, I apologize for that. But for this period  
09:39:39 24 you've indicated, December '16 through today?

09:39:42 25 A. Yes, sir.

09:39:42 1 Q. We'll come back to that, Mr. Weinstein.

09:39:46 2 Let's move on to the other category that you put  
09:39:50 3 into your total.

09:39:51 4 Now, you put in --

09:39:53 5 MR. HILL: Let's go back to PDX-4.35, please.

09:39:59 6 Q. (By Mr. Hill) The second category of cost -- so we've  
09:40:07 7 covered the first category of cost savings is what we've  
09:40:09 8 been talking about all this time, isn't it?

09:40:11 9 A. Yes, sir.

09:40:12 10 Q. All right. We looked at the 2011 documents, and we've  
09:40:15 11 looked at this cost to build branches, correct?

09:40:18 12 A. Actually, it was -- it was a 2010 document and some  
09:40:21 13 others. We looked at what I'll call early planning  
09:40:25 14 documents --

09:40:25 15 Q. Okay.

09:40:25 16 A. -- and some others.

09:40:27 17 Q. Let's look at the next category, increased profits, and  
09:40:31 18 let's, again, take a look -- not what "we" but what "you"  
09:40:35 19 showed the jury yesterday regarding increased profits.

09:40:37 20 Okay, Mr. Weinstein?

09:40:38 21 A. Yes, sir.

09:40:38 22 Q. Let's start out in this context. You showed the jury  
09:40:48 23 Plaintiff's Exhibit 417. Do you recall that? Plaintiff's  
09:40:54 24 Exhibit 417?

09:40:54 25 MR. HILL: Let's get it up here on the screen if

09:40:56 1 we can, Mr. Barnes.

09:41:01 2 A. Yes, sir, I remember that.

09:41:03 3 Q. (By Mr. Hill) You remember that document?

09:41:04 4 A. I do.

09:41:05 5 Q. And, in fact, let me just make sure so that --

09:41:18 6 MR. HILL: I tell you what, can we see PDX-4.23,

09:41:24 7 Mr. Barnes?

09:41:25 8 Q. (By Mr. Hill) Here it is, as you showed it. Look

09:41:27 9 familiar?

09:41:27 10 A. It does.

09:41:28 11 MR. HILL: Now, I don't know if we can do it in  
09:41:30 12 this. We may have to go back to the exhibit, Mr. Barnes.

09:41:32 13 I want to blow up this copyright date right here or make it  
09:41:40 14 big enough --

09:41:40 15 A. That date is 2009.

09:41:42 16 Q. (By Mr. Hill) It's blurry there, but you agree with  
09:41:45 17 me, Mr. Weinstein, that's 2009?

09:41:46 18 A. I agree that that's what it says there.

09:41:48 19 Q. And this is a 2009 document, correct?

09:41:49 20 A. I don't believe so, no, sir. I think this document is  
09:41:52 21 2012. I understand the copyright date is 2009.

09:41:56 22 Q. Okay. Well, let's --

09:41:58 23 A. But if you --

09:41:58 24 Q. I'm sorry, I didn't mean to cut you off.

09:42:00 25 A. I -- I don't think that the -- the date actually that

09:42:03 1 this information refers to is 2009.

09:42:05 2 Q. So you believe it was 2012?

09:42:09 3 A. I'm -- I'm reasonably confident of that, yes, sir.

09:42:10 4 Q. All right. Well, let's -- we'll assume it's 2012,  
09:42:13 5 then.

09:42:14 6 A. Okay.

09:42:14 7 Q. What do we know about 2012, Mr. Weinstein? What -- do  
09:42:17 8 we know that 2012 was before the hypothetical negotiation  
09:42:22 9 when these patents had issued?

09:42:24 10 A. We do.

09:42:25 11 Q. Do we know, Mr. Weinstein, that 2012 was before  
09:42:31 12 Wells Fargo -- assuming maybe what part of 2012 -- was  
09:42:34 13 before Wells Fargo had anything captured, we'll call it?

09:42:41 14 A. What -- what -- what do you mean?

09:42:43 15 Q. We didn't have mobile deposit?

09:42:46 16 A. Well, that's actually not correct if you -- if you  
09:42:51 17 understand this document.

09:42:51 18 Q. You don't -- you believe Wells Fargo had mobile deposit  
09:42:56 19 before the date that the testimony in the case has  
09:43:00 20 indicated they had it in May of 2012?

09:43:02 21 A. Well, this document is talking about a pilot study that  
09:43:05 22 Wells Fargo conducted around 2012 in a couple of states  
09:43:08 23 with respect to mobile deposit.

09:43:10 24 Q. Okay. Well, let's assume it is, then. Let's assume  
09:43:13 25 that it was at a point in 2012, this document, after we



09:43:16 1 were seeing at least some initial launch of mobile deposit,  
09:43:20 2 so that they can do a pilot study.

09:43:23 3 Now, pilot studies may not be your commercial  
09:43:25 4 launch, agree?

09:43:26 5 A. Sure.

09:43:26 6 Q. Could have been a limited test?

09:43:30 7 A. Well, it was. It -- it explains exactly what it was on  
09:43:33 8 the document.

09:43:33 9 Q. Okay. So --

09:43:34 10 A. And there's actually other information that explains  
09:43:37 11 it, as well.

09:43:39 12 Q. So this document was a limited test for exploring MRDC  
09:43:42 13 in 2012?

09:43:43 14 A. That's fair.

09:43:44 15 Q. In 2012, nobody had auto capture?

09:43:49 16 A. Correct.

09:43:49 17 Q. This document does not value auto capture?

09:43:54 18 A. It does not.

09:44:10 19 MR. HILL: Let's take a look at PDX-4.24, please,  
09:44:15 20 Mr. Barnes.

09:44:15 21 Q. (By Mr. Hill) This was another document that you  
09:44:17 22 showed, Mr. Weinstein, in connection with your increased  
09:44:21 23 profits presentation, do you recall?

09:44:23 24 A. I do, sir.

09:44:24 25 Q. This also is a -- I say also, this is a 2000 -- excuse

09:44:28 1 me -- '10 document, correct?

09:44:32 2 A. It is.

09:44:33 3 Q. Pre-auto-capture?

09:44:34 4 A. Correct.

09:44:35 5 Q. Pre-anything-capture for Wells Fargo?

09:44:37 6 A. Pre -- pre-MRDC.

09:44:42 7 Q. Okay. Pre-mobile-deposit?

09:44:44 8 A. Yes, sir.

09:44:44 9 Q. And it is an attempt by Wells Fargo to investigate the  
09:44:52 10 business case of whether MRDC made sense, right?

09:44:56 11 A. I agree with that.

09:44:57 12 Q. And at that point in time, Wells Fargo's looking at  
09:45:00 13 MRDC mobile deposit. And the only world people know at  
09:45:06 14 that point is manual, agreed?

09:45:08 15 A. Agreed.

09:45:09 16 Q. This document does nothing to place value on auto  
09:45:14 17 capture, does it, Mr. Weinstein?

09:45:16 18 A. Certainly not in 2010, that's correct.

09:45:20 19 MR. HILL: Now, can we go back to PDX-4.35 --  
09:45:26 20 4.35, Mr. Barnes?

09:45:27 21 Q. (By Mr. Hill) Okay. So there we've talked about our  
09:45:31 22 second category, which was increased profits. Let's move  
09:45:34 23 on now to our third category, which is ecosystem benefits.  
09:45:37 24 That was your third category of -- of what you say are  
09:45:41 25 quantifiable benefits of auto capture MRDC, and what I say

09:45:46 1 is quantifiable benefits of just MRDC. You understand?

09:45:50 2 A. I understand.

09:45:52 3 Q. Now, Mr. Weinstein, here what you showed the jury was

09:45:59 4 PDX-4.26?

09:46:01 5 MR. HILL: 4.26, I'm sorry, Mr. Barnes.

09:46:07 6 Q. (By Mr. Hill) Mr. Weinstein, what's the date of this

09:46:08 7 document?

09:46:09 8 A. 2011.

09:46:14 9 Q. And we can see by its plain language that it is a

09:46:22 10 MRDC-targeted document, agreed?

09:46:23 11 A. Agreed.

09:46:24 12 Q. It was put out in a point in time, Mr. Weinstein, that

09:46:29 13 was a manual-capture-only world, agreed?

09:46:32 14 A. Agreed.

09:46:35 15 Q. And in the context of ecosystem benefits, you again

09:46:41 16 showed us in PDX-4.27, Plaintiff's Exhibit 417. Do you

09:46:49 17 remember putting it up there again?

09:46:50 18 A. I do. This is a different panel from the left-hand

09:46:54 19 side that's blown up on the right.

09:46:56 20 Q. But this is still the 2009 copyright date, that you say

09:47:00 21 2012 document that we discussed earlier, agreed?

09:47:03 22 A. Well, it's a 2012 study. It's a Wells Fargo 2012

09:47:08 23 study.

09:47:08 24 Q. And -- and, Mr. Weinstein, this is a study that is

09:47:12 25 looking at MRDC customers who at that point in time didn't

09:47:22 1 know what auto capture even was, agreed?

09:47:23 2 A. Agreed.

09:47:31 3 MR. HILL: And what this -- if we look at

09:47:37 4 PDX-430 -- 4.33, Mr. Barnes.

09:47:40 5 Q. (By Mr. Hill) Yet another document you pointed out in

09:47:48 6 the context of ecosystem benefits. This shows Plaintiff's

09:47:54 7 Exhibit 14. And this document, again, pre-anything capture

09:47:59 8 for Wells Fargo, agreed?

09:48:01 9 A. Agreed.

09:48:04 10 Q. Pre-auto capture for anybody on earth, agreed?

09:48:07 11 A. As far as I know.

09:48:10 12 Q. And, Mr. Weinstein, this is a document discussing the

09:48:15 13 time to build an MRDC product, right?

09:48:18 14 A. I believe so.

09:48:19 15 Q. Not an auto capture product, MRDC product, right?

09:48:23 16 A. I agree.

09:48:24 17 Q. And there's a difference, you agree?

09:48:25 18 A. There is a difference.

09:48:28 19 Q. And, Mr. Weinstein, Wells Fargo made a business

09:48:36 20 decision based on this information to pursue an MRDC

09:48:42 21 system, a manual capture system, based on the business

09:48:49 22 information they knew about it as partly as reflected in

09:48:53 23 this document, right?

09:48:54 24 A. That's fair.

09:48:54 25 Q. And one of the approaches -- there were multiple

09:48:58 1 approaches available. One of the approaches they debated  
09:49:00 2 was maybe building their own system for mobile deposit,  
09:49:04 3 agree?

09:49:04 4 A. Yes, sir.

09:49:05 5 Q. Discussed in this document, and they talk about how  
09:49:08 6 much time that would take, and, you know, whether they  
09:49:11 7 could support that kind of thing from a technology  
09:49:14 8 standpoint, considering they're not a software company,  
09:49:16 9 they're a bank. Agree?

09:49:18 10 A. Yes, sir.

09:49:19 11 Q. And what we know is that Wells Fargo decided, instead,  
09:49:24 12 to take the route of buying software from a vendor for  
09:49:32 13 MRDC, don't we?

09:49:33 14 A. I agree.

09:49:33 15 Q. And that's what Wells Fargo ultimately decided to do  
09:49:37 16 instead of build their own system, they decided, well,  
09:49:41 17 these are available for sale from recognized sellers, we'll  
09:49:48 18 go buy it from Mitek? That's what happened factually,  
09:49:54 19 correct?

09:49:54 20 A. Correct. They -- they did a deal with Mitek.

09:49:56 21 Q. Now, one other item you mentioned in the context of  
09:50:05 22 ecosystem benefits, Mr. Weinstein, is you talked about  
09:50:07 23 Zelle. Do you remember Zelle?

09:50:08 24 A. I do, sir.

09:50:09 25 Q. All right. So in Paragraph 142 of your report,

09:50:13 1 Mr. Weinstein -- and I know you've got it there -- I'll  
09:50:15 2 read you a portion of it.

09:50:17 3 A. Just to be clear, I don't have it here. You just gave  
09:50:20 4 me the exhibit.

09:50:21 5 Q. I'm so sorry.

09:50:23 6 MR. HILL: Your Honor, may I approach and hand  
09:50:24 7 Mr. Weinstein a copy of his report?

09:50:26 8 THE COURT: You may.

09:50:34 9 THE WITNESS: Thank you, sir.

09:50:43 10 MR. HILL: You can take that down.

09:50:45 11 Q. (By Mr. Hill) Now, Mr. Weinstein, I'm looking at  
09:50:49 12 Paragraph 142 of your report, and you state in there -- I  
09:50:54 13 believe it's the last sentence of Paragraph 142, you state:  
09:50:59 14 I note that it's not possible to quantify all the ecosystem  
09:51:03 15 benefits to Wells Fargo from use of commercially viable  
09:51:07 16 MRDC.

09:51:10 17 A. You read that correctly.

09:51:11 18 Q. You say that; you say that, I can't figure out, it's  
09:51:16 19 not possible to quantify the ecosystem benefits of  
09:51:19 20 commercially viable MRDC?

09:51:22 21 A. No, that time you didn't read it correctly.

09:51:25 22 Q. Well, what are you trying to say there? I note that it  
09:51:29 23 is not possible to quantify all of the ecosystem benefits  
09:51:30 24 to Wells Fargo from use of commercially viable MRDC. Did I  
09:51:35 25 read it correctly that time?

09:51:37 1 A. Yes, sir.

09:51:37 2 Q. Now, you go on after that statement, Mr. Weinstein, to  
09:51:41 3 discuss Zelle, don't you?

09:51:42 4 A. I do.

09:51:43 5 Q. All right. Let's talk about Zelle a little bit. You  
09:51:45 6 go on to discuss Zelle because you're trying to use Zelle  
09:51:49 7 as a substitute or as an alternative to look at to try to  
09:51:55 8 evaluate ecosystem benefits, aren't you?

09:51:57 9 A. Yes, sir.

09:51:58 10 Q. And we know Zelle is a mobile banking app that allows  
09:52:02 11 people to transfer money to each other, just account to  
09:52:07 12 account, agree?

09:52:08 13 A. In -- in different locations, yes, sir.

09:52:11 14 Q. It's not a mobile deposit app, is it?

09:52:12 15 A. No, sir.

09:52:13 16 Q. Doesn't have anything to do with checks?

09:52:15 17 A. Correct.

09:52:17 18 Q. Not anything USAA invented?

09:52:20 19 A. As far as I know.

09:52:22 20 Q. Well, there's certainly -- you've seen no evidence of  
09:52:24 21 that, have you?

09:52:25 22 A. Absolutely no evidence.

09:52:26 23 Q. In fact, you know that Zelle is a creation of a group  
09:52:29 24 of several banks?

09:52:31 25 A. Correct.

09:52:32 1 Q. Including Wells Fargo and including others?

09:52:35 2 A. Yes, sir.

09:52:35 3 Q. And those banks got together, created a technology, and  
09:52:39 4 they share it with themselves and the banking industry,  
09:52:43 5 correct?

09:52:43 6 A. Right.

09:52:45 7 Q. Now, Zelle is faster than a check deposit because it  
09:52:50 8 links directly to the sender and recipient's bank accounts,  
09:52:57 9 you understand?

09:52:58 10 A. If you mean the money gets there right away --

09:53:01 11 Q. Yes, sir.

09:53:01 12 A. -- that is my understanding, yes, sir.

09:53:03 13 Q. There's no bank processing of check images or check  
09:53:06 14 clearing that has to go on with Zelle?

09:53:09 15 A. True.

09:53:09 16 Q. Zelle doesn't require any imaging technology, does it?

09:53:13 17 A. Correct.

09:53:13 18 Q. Zelle has no limits on the amounts of how much a  
09:53:16 19 customer can send or receive with regard to it, does it?

09:53:19 20 A. I don't know that to be true in all cases.

09:53:21 21 Q. But you know that there usually are limits on mobile  
09:53:24 22 deposit amounts; you understand that?

09:53:26 23 A. Sometimes there are, yes, sir.

09:53:30 24 Q. And you know that banks also have several other  
09:53:33 25 available alternatives for sending money digitally to



09:53:37 1 others these days, right?

09:53:40 2 A. I agree with that.

09:53:40 3 Q. Zelle only allows customers to transfer money that's  
09:53:43 4 already in their bank account?

09:53:45 5 A. Correct.

09:53:46 6 Q. Not putting new money in; moving your current money  
09:53:51 7 around?

09:53:51 8 A. From one person to another, correct.

09:53:56 9 Q. You agree with me, Mr. Weinstein, there are a laundry  
09:54:01 10 list of differences between Zelle and mobile check deposit?

09:54:06 11 A. Sure, there are differences. My testimony was Zelle is  
09:54:11 12 a useful benchmark.

09:54:13 13 Q. And not only are there differences between Zelle and  
09:54:19 14 mobile check deposit, there are even broader differences,  
09:54:22 15 if we're talking about Zelle, compared to the USAA specific  
09:54:27 16 method for auto capture, correct?

09:54:29 17 A. Sure.

09:54:29 18 Q. So, Mr. Weinstein, let's go back to PDX-4.35.

09:54:54 19 So now we have talked about the last of your three  
09:54:57 20 categories, which were the ecosystem benefits you  
09:54:59 21 calculated?

09:55:00 22 A. Correct.

09:55:01 23 Q. And, Mr. Weinstein, you say that the value of those  
09:55:05 24 things that we just looked at are the value here of auto  
09:55:15 25 capture MRDC. Did I get that right?

09:55:17 1 A. You did.

09:55:18 2 Q. Mr. Weinstein, none of the documents that we just  
09:55:21 3 looked at in support of your stated auto capture number  
09:55:25 4 have anything to do with anything other than MRDC, do they,  
09:55:33 5 sir?

09:55:33 6 A. That's -- that's just not true.

09:55:36 7 Q. And, more importantly, Mr. Weinstein, we know what you  
09:55:45 8 told us yesterday on direct examination, which is, as I  
09:55:55 9 said earlier, I start with the benefits associated with  
09:55:58 10 MRDC. That's not auto capture MRDC, as the evidence we've  
09:56:02 11 just reviewed shows, is it, Mr. Weinstein?

09:56:05 12 A. We start with the benefits associated with mobile  
09:56:08 13 deposit, but during the damage period, it's auto capture  
09:56:11 14 MRDC.

09:56:12 15 Q. Now, Mr. Weinstein, let's talk again -- let's get us  
09:56:26 16 back to where we started about that hypothetical  
09:56:28 17 negotiation room, because, again, the jury has got to take  
09:56:30 18 all this evidence into account to figure out what would  
09:56:34 19 have happened in that room, correct?

09:56:35 20 A. Yes, sir.

09:56:36 21 Q. So let's go back to that room. And we know, then, that  
09:56:42 22 in that room, we're going to be talking about the value of  
09:56:48 23 the specific contribution from the USAA specific method of  
09:56:58 24 auto capture, agree?

09:57:00 25 A. As taught in the patents, yes, sir.

09:57:03 1 Q. So, Mr. Weinstein, we know in that room that Wells  
09:57:10 2 Fargo as a rational actor is not going to agree to pay USAA  
09:57:14 3 for benefits they are already receiving and cost savings  
09:57:19 4 they are already receiving from MRDC that pre-existed, are  
09:57:24 5 they, sir?

09:57:24 6 A. They're only going to pay for benefits associated with  
09:57:28 7 the value created from their use of the patents.

09:57:35 8 Q. And we know that, from Mr. Calman's testimony  
09:57:44 9 yesterday, looking at USAA's own numbers, even he and USAA  
09:57:51 10 admit that when they switched from manual to auto capture,  
09:57:58 11 they saw a 7 percent increase in check acceptance rate,  
09:58:03 12 agree?

09:58:04 13 A. I can't agree with that. I'm not certain what you're  
09:58:08 14 talking about.

09:58:08 15 Q. Okay. You don't recall Mr. Calman discussing the fact  
09:58:11 16 that USAA's success with this showed that they went from an  
09:58:16 17 84 percent acceptance rate with manual to a 91 percent  
09:58:23 18 acceptance rate with auto capture after they first  
09:58:26 19 introduced it?

09:58:26 20 A. Thank you for that. I do understand now. And that was  
09:58:29 21 part of his testimony on that subject, yes, sir.

09:58:31 22 Q. And so if we look at that, Mr. Weinstein, 84 percent to  
09:58:48 23 91 percent, that's a 7 percent delta, isn't it, or  
09:58:55 24 difference?

09:58:55 25 A. Viewed that way, that's correct, yes, sir.

09:59:00 1 Q. Okay. Well, let's look at it this way. If we want to  
09:59:04 2 do it as a percentage, what's the percentage of increase in  
09:59:08 3 the success rate?

09:59:09 4 A. So that would be 7 over 84.

09:59:12 5 Q. That's right. It would be. So what you do if you want  
09:59:16 6 to calculate the percentage increase and success rate, is  
09:59:19 7 you divide 7, you divide it by 84, don't you? And if you  
09:59:25 8 divide 7 by 84, do you know what you get?

09:59:27 9 A. You get something less than 10 percent.

09:59:32 10 Q. You get roughly 8 percent, Mr. Weinstein. That's what  
09:59:38 11 you get.

09:59:38 12 A. Yeah, I'm fine with that.

09:59:40 13 Q. That's what USAA saw from the introduction of auto  
09:59:46 14 capture, an 8 percent increase in acceptance rate. You  
09:59:51 15 don't quarrel with those numbers, do you?

09:59:54 16 A. As I said here, I don't quarrel with any of that math.

09:59:57 17 Q. Do you think that Wells Fargo as a rational actor is  
10:00:01 18 going to sit in that room and pay \$300 million, walk out of  
10:00:06 19 that room having written a \$300 million check for a product  
10:00:13 20 that, at best, again -- you know, whether that's the actual  
10:00:17 21 success rate is an open question in this case -- but a  
10:00:21 22 product that, at best, improves the performance of MRDC by  
10:00:25 23 8 percent?

10:00:27 24 A. That's not the analysis Wells Fargo would do. Wells  
10:00:32 25 Fargo would be aware of the benefits, as I have calculated

10:00:38 1 them, and USAA would be, too.

10:00:40 2 Q. Why can't Wells Fargo just use auto -- or, excuse me,  
10:00:44 3 why can't Wells Fargo just not use any kind of auto  
10:00:46 4 capture?

10:00:46 5 A. Because consumers don't accept it. It's clear during  
10:00:49 6 the damage period, both from Wells Fargo's own -- own  
10:00:53 7 witnesses and the public trade press, that during the  
10:00:56 8 damage period, just using manual capture is not an  
10:01:00 9 acceptable -- acceptable alternative.

10:01:04 10 Q. Let's talk about that a minute.

10:01:05 11 The -- let's talk about this. Let's assume you're  
10:01:10 12 wrong, Mr. Weinstein, okay? I'm not asking you to abandon  
10:01:13 13 your opinion. But for sake of argument, assume you're  
10:01:16 14 wrong. And let's assume that manual capture is, in fact, a  
10:01:21 15 viable alternative and that there's proof of that, okay?

10:01:27 16 So if we assume that manual capture is a viable  
10:01:33 17 alternative and Wells Fargo is sitting in that room knowing  
10:01:35 18 that, hey, we can use manual capture, manual capture is a  
10:01:39 19 viable alternative, then that cost to go back to manual  
10:01:46 20 capture, it sets a cap on what they would ever pay in that  
10:01:51 21 negotiation, doesn't it, Mr. Weinstein?

10:01:52 22 A. It does, but Wells Fargo sitting in that room knows  
10:01:56 23 absolutely positively that manual capture is not acceptable  
10:01:59 24 to consumers at that time.

10:02:01 25 Q. I understand that's your opinion. But my purpose is to

10:02:04 1 ask you, let's assume you're wrong and let's assume that  
10:02:09 2 manual capture is, in fact, and the -- the evidence shows  
10:02:12 3 and Wells Fargo has, you know, concluded in that  
10:02:16 4 negotiation that manual capture is, in fact, a viable  
10:02:19 5 alternative, it puts a cap on what they would ever pay  
10:02:23 6 coming out of that room, doesn't it?

10:02:24 7 A. Sure.

10:02:25 8 Q. And we can agree, Mr. Weinstein, for Wells Fargo to go  
10:02:31 9 to manual capture, it wouldn't cost them much at all, would  
10:02:35 10 it? They've done it before, right?

10:02:38 11 A. Well, they -- they had done it before, that's true.

10:02:49 12 Q. Mr. Weinstein, let's talk about a bank called Chase.  
10:02:57 13 You've heard of Chase before?

10:02:59 14 A. I have.

10:03:00 15 Q. All right. Mr. Weinstein, with regard to Chase, we've  
10:03:09 16 seen some information in the case already about them,  
10:03:11 17 haven't we, sir?

10:03:12 18 A. Yes.

10:03:14 19 Q. Let's look, for example -- you've seen Plaintiff's  
10:03:17 20 Exhibit No. 7?

10:03:22 21 MR. HILL: Can we get that, please?

10:03:24 22 Q. (By Mr. Hill) Have you seen this document before?

10:03:27 23 A. I have.

10:03:29 24 Q. Now, if we look at Plaintiff's Exhibit No. 7, this is a  
10:03:33 25 2011 Wells Fargo Bank document, right?

10:03:36 1 A. Yes.

10:03:36 2 Q. And it was discussing MRDC?

10:03:40 3 A. Correct.

10:03:41 4 Q. And we know at that time that it's discussing manual  
10:03:45 5 MRDC, right?

10:03:46 6 A. Yes, sir.

10:03:48 7 MR. HILL: And let's look at the next page, if we  
10:03:51 8 can. Keep going here, Mr. Barnes. Continue. Continue.  
10:03:57 9 I'm looking for the table stakes slide, Mr. Barnes. Here  
10:04:02 10 we go.

10:04:03 11 Q. (By Mr. Hill) This is the portion of Plaintiff's  
10:04:05 12 Exhibit 7, I believe the jury has been shown before.

10:04:08 13 Now, you may have discussed it in your own  
10:04:10 14 presentation. Did you, Mr. Weinstein?

10:04:11 15 A. Well, I know I used the word "table stakes."

10:04:14 16 Q. All right.

10:04:15 17 MR. HILL: Can we get that back up?

10:04:20 18 I'm sorry, Your Honor, may I have a moment?

10:04:23 19 THE COURT: You may have a moment.

10:04:34 20 Q. (By Mr. Hill) Now, Mr. Weinstein, we're getting the --  
10:04:36 21 apparently, I have the unofficial version of that document.  
10:04:41 22 We're getting the official version put back up.

10:04:43 23 But, Mr. Weinstein, what we see in that document  
10:04:47 24 and what's been presented of it is that there's this  
10:04:49 25 discussion of table stakes, right?

10:04:51 1 A. That's true.

10:04:54 2 Q. And let me see if I can find that in the context of  
10:05:01 3 your slides.

10:05:15 4 What you put up in your slides was a Wells  
10:05:20 5 Fargo -- a slide of a Wells Fargo witness who was making  
10:05:23 6 reference to that, right? Mr. Ajami?

10:05:29 7 A. Well, that -- that's one of slides I put up, yes, sir.

10:05:32 8 Q. And in his testimony he was discussing that document.  
10:05:35 9 Do you recall that?

10:05:36 10 A. I do.

10:05:36 11 Q. And that document concerned Chase Bank, didn't it?

10:05:41 12 A. It referenced Chase Bank, yes.

10:05:46 13 Q. And the table stakes that it was referring to was that  
10:05:48 14 by Chase launching in 2010 MRDC, Chase had made mobile  
10:05:58 15 deposit table stakes for the industry?

10:05:59 16 A. I think that's the sense you get from that document,  
10:06:02 17 yes, sir.

10:06:02 18 Q. And, again, that's in 2010, pre-auto capture,  
10:06:07 19 pre-anything capture for Wells Fargo. And based on that  
10:06:10 20 view that, hey, this is important to the market, two years  
10:06:13 21 later, Wells Fargo will have decided they're going to put  
10:06:18 22 out mobile deposit, and they went and bought it from Mitek  
10:06:21 23 and put it out. Agreed?

10:06:22 24 A. That's a summary.

10:06:23 25 Q. All right. Now, we know Chase introduced a mobile



10:06:34 1 remote deposit system in 2010, don't we, sir?

10:06:37 2 A. Around that time, I believe.

10:06:40 3 Q. And we know a little bit more about Chase in this case,  
10:06:42 4 don't we, Mr. Weinstein?

10:06:46 5 MR. HILL: Let's take a look at Plaintiff's  
10:06:47 6 Exhibit 5.

10:06:49 7 Q. (By Mr. Hill) You recognize Plaintiff's Exhibit 5,  
10:06:53 8 don't you, sir?

10:06:54 9 A. I do.

10:06:54 10 Q. Plaintiff's Exhibit 5 is a document you discussed in  
10:06:59 11 your own direct examination, correct?

10:07:01 12 A. Yes, sir.

10:07:02 13 Q. This is an industry report by a company called  
10:07:06 14 Futurion. Did I get that right?

10:07:08 15 A. You did.

10:07:17 16 Q. Do you know anything about Futurion?

10:07:18 17 A. Yes, it's published by a gentleman who's been engaged  
10:07:20 18 in this industry for many years, and it's a financial  
10:07:23 19 industry-type document.

10:07:25 20 Q. Okay. And it's a document you've relied on for your  
10:07:28 21 work, correct?

10:07:28 22 A. It's one of the documents I considered, yes, sir.

10:07:32 23 Q. And this is a 2017 mobile deposit benchmark report --  
10:07:37 24 2017, down here, right?

10:07:38 25 A. 2017, yes, sir.

10:07:44 1 Q. And it discusses --

10:07:46 2 MR. HILL: If we can look at, let's see here,  
10:07:51 3 Page 21, Mr. Barnes.

10:07:53 4 Q. (By Mr. Hill) It's got a chart in it. We've seen this  
10:07:55 5 chart already in evidence, haven't we, sir?

10:07:58 6 A. We -- we did see it, yes, sir.

10:07:59 7 Q. And what this chart does is provide findings on -- and  
10:08:03 8 a ranking of the banks in the country, agree?

10:08:05 9 A. Agree.

10:08:06 10 Q. And what we see here, Mr. Weinstein, is they've got a  
10:08:11 11 column right here where they evaluated which banks have  
10:08:17 12 auto capture and which don't, agree?

10:08:19 13 A. Agreed.

10:08:20 14 Q. And the bank that we know in 2017 still, despite having  
10:08:26 15 launched it in 2010, manual capture, that still uses manual  
10:08:31 16 capture is who?

10:08:32 17 A. Chase.

10:08:33 18 Q. Chase. So in 2017, Chase is still using manual  
10:08:42 19 capture, right?

10:08:42 20 A. Yes. And this very report on an earlier page points  
10:08:47 21 out that Chase has fallen down this very list because it  
10:08:53 22 doesn't have auto capture.

10:08:54 23 Q. Okay. But we know in 2017 -- Chase started in 2010,  
10:09:02 24 and they used manual capture this whole time, don't they,  
10:09:06 25 all the way through 2017?

10:09:08 1 A. Correct.

10:09:11 2 Q. Mr. Weinstein, you understand that Chase is the second  
10:09:20 3 largest bank in the country, don't you, sir?

10:09:23 4 A. As far as I know, yes. It's certainly a good bank.

10:09:25 5 Q. Larger than Wells Fargo?

10:09:26 6 A. Yes.

10:09:27 7 Q. And so despite the fact that it only offered manual  
10:09:32 8 capture for all this time period, including through the  
10:09:39 9 date of the hypothetical negotiation, despite that fact,  
10:09:45 10 it's the second largest bank in the country?

10:09:48 11 A. And ranked 12th.

10:09:50 12 Q. All right. And they only offered mobile capture. They  
10:09:55 13 weren't going out of business, were they?

10:09:57 14 A. No, sir.

10:09:58 15 Q. Still had lots of customers?

10:10:01 16 A. Correct.

10:10:02 17 Q. And even though you may be ranked 12th, you probably  
10:10:06 18 still have a lot of happy customers among your customer  
10:10:08 19 base, don't you?

10:10:09 20 A. Yes, sir.

10:10:10 21 Q. Mr. Weinstein, there is no question in this case that  
10:10:15 22 Chase proves that manual capture can be done at scale, is  
10:10:20 23 there?

10:10:20 24 A. That's just absolutely incorrect, given this very  
10:10:29 25 report you're talking about. Yes, they can do it at scale.

10:10:34 1 They can lose customer satisfaction, which is exactly what  
10:10:37 2 the report says.

10:10:38 3 Q. Mr. Weinstein, let's see if you can answer my question.  
10:10:40 4 My question was, the fact that Chase did it all the way  
10:10:47 5 through 2017 proves, contrary to what Mr. Calman said, that  
10:10:52 6 a bank can deploy, technically and successfully, manual  
10:10:57 7 capture at scale, doesn't it?

10:10:59 8 A. No. It can do it technically, yes. It cannot do it  
10:11:03 9 successfully. And that's the conclusion of this report.

10:11:07 10 Q. Chase certainly didn't shut down between 2010 and 2017  
10:11:12 11 because it was having so many failures with its auto  
10:11:15 12 capture system that it locked down the whole operation, did  
10:11:20 13 it?

10:11:20 14 A. Surely, it didn't shut down. That's true.

10:11:24 15 Q. And so to the extent the suggestion has been made to  
10:11:28 16 this jury that if you use manual capture, there's just so  
10:11:31 17 many failures, the whole house of cards comes crumbling  
10:11:35 18 down, Chase proves that's just not true?

10:11:42 19 A. I -- I've just given you my conclusions.

10:11:44 20 Q. Were you here when Mr. Bueche took the stand and  
10:11:45 21 said -- and I may have said auto capture then. You know  
10:11:48 22 I'm referring to manual capture when I'm referring to  
10:11:51 23 Chase?

10:11:51 24 A. I do.

10:11:52 25 Q. You were here when Mr. Bueche took the stand?

10:11:54 1 A. I was.

10:11:55 2 Q. He told the jury: Manual capture gums up the whole  
10:11:59 3 works. Do you recall that?

10:12:00 4 A. He did not use those terms. He said: Manual capture  
10:12:06 5 cannot be -- auto capture -- his testimony stands for  
10:12:10 6 itself. The jury was here. I was here.

10:12:13 7 Q. They claim manual capture couldn't be scaled. Do you  
10:12:24 8 recall that?

10:12:24 9 A. He's talking about in the current period it could not  
10:12:28 10 be scaled successfully.

10:12:29 11 Q. 2017 is not the currently period, sir?

10:12:31 12 A. Yes, sir. It is the current period.

10:12:32 13 Q. It is the current period?

10:12:34 14 A. Yes, sir.

10:12:34 15 Q. And in 2017, the second largest bank in the country  
10:12:37 16 used only manual capture?

10:12:38 17 A. We've been through that. Yes, it did. And it -- it  
10:12:45 18 lost in its rankings of consumer satisfaction.

10:12:49 19 Q. Bank bigger than Wells Fargo successfully used manual  
10:12:53 20 capture, and it didn't break the system, did it, sir?

10:12:56 21 A. That is absolutely not what that report says. There's  
10:13:00 22 an earlier page in that report, might be Page 3 or Page 5,  
10:13:06 23 which specifically says that Chase lost consumer  
10:13:09 24 satisfaction because it specifically did not have auto  
10:13:13 25 capture.

10:13:13 1 Q. And, Mr. Weinstein, if we go back now to that  
10:13:16 2 hypothetical negotiation room, okay, and we assume that  
10:13:22 3 Wells Fargo, a rational actor in that room, based on all  
10:13:26 4 the evidence, believes manual capture can be used in scale,  
10:13:33 5 and if the jury in our case looks at that evidence and  
10:13:37 6 decides that manual capture can be used at scale, that  
10:13:41 7 switch to manual capture places a cap -- a finite cap on  
10:13:48 8 what any rational actor would ever agree to voluntarily pay  
10:13:54 9 sitting in that room, doesn't it, sir?

10:13:55 10 A. Yes, I agree with that.

10:14:13 11 THE COURT: Counsel, approach the bench.

10:14:15 12 MR. HILL: Yes, sir, Your Honor.

10:14:19 13 (Bench conference.)

10:14:22 14 THE COURT: How close are you to passing the  
10:14:24 15 witness?

10:14:24 16 MR. HILL: I've got probably a good 15 minutes or  
10:14:27 17 so left, Your Honor. We can take a break and probably  
10:14:28 18 speed me up.

10:14:28 19 THE COURT: We'll take a recess.

10:14:29 20 MR. HILL: Thank you.

10:14:30 21 MR. MELSHEIMER: Thank you, Your Honor.

10:14:31 22 (Bench conference concluded.)

10:14:33 23 THE COURT: Ladies and gentlemen, we're going to  
10:14:34 24 take a short recess at this time.

10:14:36 25 You may simply close and leave your notebooks in

10:14:38 1 your chairs.

10:14:41 2 Let me remind you to follow all the instructions

10:14:44 3 I've given you, including not to discuss the case with each

10:14:46 4 other. We'll have you back shortly to continue.

10:14:49 5 With that, the jury's excused for recess.

10:14:52 6 COURT SECURITY OFFICER: All rise.

10:14:55 7 (Jury out.)

10:14:57 8 THE COURT: The Court stands in recess.

10:26:31 9 (Recess.)

10:26:34 10 (Jury out.)

10:26:35 11 COURT SECURITY OFFICER: All rise.

10:26:35 12 THE COURT: Let me ask our witness to return to  
10:26:38 13 the witness stand. Is he in the courtroom? Somebody find  
10:26:42 14 our witness.

10:27:14 15 Are we ready, counsel, or do we still have issues?

10:27:17 16 MR. HILL: We have one issue, Your Honor.

10:27:20 17 MR. MELSHEIMER: Just trying to get an exhibit  
10:27:23 18 identified properly, Your Honor. Thank you, Your Honor.

10:27:27 19 THE COURT: Are you ready to proceed, Mr. Hill?

10:27:28 20 MR. HILL: Yes, Your Honor.

10:27:29 21 THE COURT: Let's bring in the jury, Mr. Johnston.

10:27:39 22 COURT SECURITY OFFICER: All rise.

10:27:40 23 (Jury in.)

10:27:41 24 THE COURT: Please be seated.

10:27:59 25 We'll continue with the Defendant's

10:28:04 1 cross-examination of the witness.

10:28:05 2 You may proceed, Mr. Hill.

10:28:06 3 MR. HILL: Thank you, Your Honor.

10:28:07 4 Q. (By Mr. Hill) Mr. Weinstein, let me, just to close out  
10:28:12 5 on that hypothetical negotiation, ask you one other thing  
10:28:14 6 about what goes on in that room.

10:28:16 7 What you're negotiating there is a bare patent  
10:28:21 8 license, correct?

10:28:21 9 A. Yes, sir.

10:28:22 10 Q. And a bare patent license means all you're getting --  
10:28:25 11 all you're getting is the right to practice the specific  
10:28:31 12 inventions in the specific patents licensed, correct?

10:28:35 13 A. Yes, sir.

10:28:35 14 Q. You're not getting other technology?

10:28:37 15 A. Correct.

10:28:37 16 Q. You're not getting any kind of infrastructure?

10:28:41 17 A. Also true.

10:28:42 18 Q. You're not getting any service for any kind of actual  
10:28:49 19 tangible deliverable from the person that's granting the  
10:28:52 20 license, are you?

10:28:53 21 A. You're getting the right to use the patents-in-suit.

10:28:57 22 Q. So all you're getting, if you will, is a permission  
10:29:00 23 slip, right?

10:29:01 24 A. A permission slip to use the patents-in-suit.

10:29:04 25 Q. So you've still got to build your own thing, right?



10:29:08 1 A. True.

10:29:09 2 Q. Buying that patent license doesn't hand you a  
10:29:14 3 ready-to-go system?

10:29:15 4 A. Correct.

10:29:16 5 Q. Mr. Weinstein, I want to look at one other thing that  
10:29:20 6 you've addressed in your direct examination yesterday.

10:29:23 7 MR. HILL: Can we get PDX-4.12, please?

10:29:33 8 Q. (By Mr. Hill) Mr. Weinstein, you recall showing this  
10:29:46 9 slide to the jury yesterday?

10:29:47 10 A. Yes, sir.

10:29:47 11 Q. This is a call-out of Defendant's Exhibit -- or, excuse  
10:29:55 12 me, Plaintiff's Exhibit 162, and you've put a portion of it  
10:29:59 13 on the screen here, haven't you?

10:30:01 14 A. Yes, sir.

10:30:01 15 Q. And if we actually look at Plaintiff's Exhibit 162 --

10:30:07 16 MR. HILL: And may I approach and hand  
10:30:10 17 Mr. Weinstein a hard copy of it, Your Honor?

10:30:12 18 THE COURT: You may.

10:30:19 19 Q. (By Mr. Hill) If we actually look at Plaintiff's  
10:30:21 20 Exhibit 162, Mr. Weinstein, what -- what you have on the  
10:30:24 21 slide here is, it says: USAA asked Wells Fargo to license  
10:30:30 22 in August of 2017. Right? That's the caption that you put  
10:30:35 23 on it?

10:30:36 24 A. Yes, sir.

10:30:36 25 Q. And, again, we're talking here in 2017?

10:30:41 1 A. 2017, yes, sir.

10:30:43 2 Q. All right. And it says that that's when this ask  
10:30:46 3 occurred; that's when we were asked.

10:30:51 4 Mr. Weinstein, I've read this exhibit pretty  
10:30:54 5 closely. I'd ask that you show me in Exhibit 162 where  
10:30:59 6 they asked.

10:31:04 7 A. They're communicating --

10:31:12 8 Q. Okay.

10:31:13 9 A. They're communicating to Wells Fargo representatives an  
10:31:19 10 interest in licensing USAA's patents. That's right in the  
10:31:25 11 section that's called out on the front page.

10:31:27 12 Q. Well, you understand when parties -- parties often have  
10:31:32 13 discussions about topics without a specific ask being made,  
10:31:37 14 right?

10:31:37 15 A. Sure.

10:31:37 16 Q. Often you have preliminary discussions to try to  
10:31:40 17 understand issues or understand what the topic may even be  
10:31:44 18 about; would you agree?

10:31:45 19 A. I do.

10:31:46 20 Q. And if we look, Mr. Weinstein --

10:31:49 21 MR. HILL: If we can get Plaintiff's Exhibit 162,  
10:31:59 22 Mr. Barnes, the actual document. Before we do that, before  
10:32:03 23 we take this off the screen -- oops, I was too late. Yes,  
10:32:14 24 please.

10:32:26 25 Q. (By Mr. Hill) If we look at the part you've called out

10:32:29 1 here, Mr. Weinstein, that's dated in 2017, which is the  
10:32:32 2 date that you put on there, okay; do we see that? And it's  
10:32:37 3 an email from a guy named Ron Epstein to -- to a gentleman  
10:32:42 4 named Rob Glance; you see that?

10:32:46 5 A. I do.

10:32:47 6 Q. And Rob Glance is with Wells Fargo, correct?

10:32:51 7 A. Yes, sir.

10:32:52 8 Q. You know who Ron Epstein is?

10:32:54 9 A. I do.

10:32:55 10 Q. Who is Ron Epstein?

10:32:56 11 A. Ron Epstein had been retained by USAA at least in  
10:33:02 12 connection with -- during this time period in connection  
10:33:05 13 with their efforts to license their technology.

10:33:08 14 Q. So he's a lawyer, right?

10:33:09 15 A. Yes, he is.

10:33:10 16 Q. Okay. And if we actually look at the page where this  
10:33:17 17 portion of the email that you highlighted appears, I  
10:33:20 18 believe that's going to be -- this is a multi-page email  
10:33:30 19 string, isn't it, Mr. Weinstein?

10:33:31 20 A. Yes, sir.

10:33:35 21 Q. I believe this is going to be at Page 8.

10:33:41 22 MR. HILL: Bottom of Page 8, Mr. Barnes. Let's go  
10:33:50 23 down to the bottom.

10:33:51 24 Q. (By Mr. Hill) And there's where we see the part you  
10:33:53 25 were just shown, correct?

10:33:55 1 A. Yes, sir.

10:33:55 2 Q. And what it says here is: Thank you for your openness  
10:33:58 3 to share views regarding USAA's licensing efforts with  
10:34:03 4 response -- with respect to remote deposit capture patents,  
10:34:08 5 and per our conversation, they have information they want  
10:34:13 6 to share with us. Right?

10:34:20 7 MR. HILL: If we scroll on to the next page.

10:34:25 8 Q. (By Mr. Hill) What they're doing here in this email  
10:34:28 9 exchange, Mr. Weinstein, they're trying to agree upon terms  
10:34:31 10 to hold discussions, aren't they? And I'm on Page 9,  
10:34:43 11 Mr. Weinstein.

10:34:43 12 A. Yeah, I see it, thank you.

10:34:45 13 Q. Okay.

10:34:46 14 A. Yeah, they're trying to kind of set out the ground  
10:34:48 15 rules for the conversations.

10:34:50 16 Q. And these are the ground rules for the conversation  
10:34:52 17 that they then want to have, the substantive conversation  
10:34:54 18 they then want to have, right?

10:34:56 19 A. That they didn't want to have?

10:34:58 20 Q. No, that they do want to have. They're try --

10:35:01 21 A. That they do want to have, yes, sir.

10:35:03 22 Q. They're trying to set out the ground rules for this  
10:35:05 23 discussion they want to have?

10:35:06 24 A. Yes, sir.

10:35:06 25 Q. So they go on to agree to certain points or try to

10:35:10 1 agree to certain points, and the first is that the  
10:35:13 2 communications concerning this, they say in Part 2 --

10:35:17 3 MR. BUNT: Your Honor, may we approach the bench  
10:35:19 4 for a moment?

10:35:19 5 THE COURT: Approach the bench.

10:35:21 6 (Bench conference.)

10:35:29 7 THE COURT: Yes, Mr. Bunt?

10:35:31 8 MR. BUNT: Your Honor, a portion that they're  
10:35:33 9 holding up is the portion that was objected to during all  
10:35:37 10 the pre-trial hearings about getting into 408-type  
10:35:41 11 discussions, and we wouldn't be able to use it for  
10:35:43 12 litigation purposes and stuff like that.

10:35:45 13 This all was dealt with before, and it wasn't  
10:35:47 14 supposed to be gone into. It was all supposed to have been  
10:35:51 15 redacted out. It was just supposed to be the notice  
10:35:53 16 provision that was coming in.

10:35:56 17 MR. HILL: Your Honor, this is their exhibit. It  
10:35:58 18 was our objection on 408 that you shouldn't let it in. You  
10:36:02 19 overruled our objection, and you did let it in. They put  
10:36:04 20 the exhibit in front of the jury. I'm trying to discuss  
10:36:05 21 their exhibit with their witness they used before the jury.  
10:36:08 22 This is in evidence.

10:36:10 23 MR. SHEASBY: Your Honor, this is an express  
10:36:12 24 portion that discusses -- they're going to try to suggest  
10:36:14 25 that USAA is breaking a deal by using this email.

10:36:17 1 THE COURT: Well, my question is, Mr. Bunt's  
10:36:21 2 indicated that this was an unredacted document that the  
10:36:24 3 Court ordered redacted when it admitted it, and Mr. Hill's  
10:36:28 4 telling me that's not the case. It can't be both ways.

10:36:31 5 Is this the correct document as pre-admitted by  
10:36:34 6 the Court?

10:36:34 7 MR. SHEASBY: Your Honor, my understanding is it's  
10:36:37 8 not, that this document -- that we had an agreement that we  
10:36:39 9 were not going to discuss any of the 408 --

10:36:41 10 THE COURT: I'm not talking about an agreement.  
10:36:43 11 I'm talking about the Court's ruling.

10:36:43 12 MR. SHEASBY: No, no. My understanding is your  
10:36:45 13 order that we could not discuss the FRE 408 portions. The  
10:36:52 14 only thing that was coming in was the notice.

10:36:52 15 MR. HILL: Your Honor, that's the point. So they  
10:36:54 16 got this in by you in pre-trial by telling you they were  
10:36:58 17 going to use it to show -- this was the notice of the  
10:36:59 18 patents for marking.

10:37:00 19 But what they did is they took their damage expert  
10:37:03 20 and they put it on a slide and they said they asked us to  
10:37:08 21 take a license. Those will be on just a notice use. And  
10:37:08 22 so I get to show through their witness that, in fact, they  
10:37:11 23 didn't ask us to take a license. What they did is tried to  
10:37:14 24 agree on terms to have discussions, and that's all this  
10:37:17 25 email exchange shows.

10:37:19 1 MR. SHEASBY: You can do that without publishing  
10:37:21 2 the part that says. This shall not be used for any other  
10:37:24 3 purpose and it violates FRE 408. So we can skip all beyond  
10:37:28 4 this and not go over the controversial part by just not  
10:37:32 5 publishing the email and because this says about you will  
10:37:35 6 not use it for any other purpose, and there's going to be  
10:37:38 7 an implication that we have acted improperly by using this  
10:37:41 8 email.

10:37:42 9 MR. HILL: Your Honor, you'll recall that was our  
10:37:43 10 position at pre-trial is that we thought they were  
10:37:43 11 contractually hamstrung -- that we thought they were  
10:37:47 12 contractually hamstrung from using this exhibit. They said  
10:37:51 13 no. And the Court ruled they weren't; that they could use  
10:37:53 14 it and it was all coming in.

10:37:54 15 And this document is in evidence by the Plaintiff  
10:37:57 16 with no redactions, and so I'm entitled to examine the  
10:38:00 17 witness about it.

10:38:03 18 MR. SHEASBY: Your Honor, if the proper redactions  
10:38:07 19 were not made, that's my responsibility. But this is  
10:38:12 20 highly, highly toxic and inflammatory material. It's  
10:38:16 21 talking about FR -- FRE 408 which the Judge -- which the  
10:38:21 22 jury does not know about. This has no place in front of  
10:38:23 23 the jury.

10:38:24 24 MR. HILL: They shouldn't have worked so hard to  
10:38:26 25 get it in, Judge. They should have --

10:38:27 1 THE COURT: All right. All right. Is it your  
10:38:31 2 intention to use this particular page in its entirety,  
10:38:34 3 Mr. Hill?

10:38:34 4 MR. HILL: The portion that I have displayed,  
10:38:36 5 which was here up. And my point here, Your Honor, is to  
10:38:39 6 show that this was parties trying to agree to have a  
10:38:41 7 candid, confidential conversation; not a request to take a  
10:38:46 8 license.

10:38:47 9 MR. SHEASBY: You can do that without --

10:38:48 10 MR. HILL: The request to take a license factually  
10:38:52 11 never occurred, we submit, because there was never an  
10:38:56 12 actual offer made. I'm, obviously, not going to get into  
10:38:57 13 offers and that kind of thing. But I'm entitled to show  
10:39:01 14 that this is not what they purport it to be. They put it  
10:39:04 15 in evidence, pre-admitted --

10:39:06 16 THE COURT: If it's been pre-admitted without  
10:39:09 17 redactions and if it's been used before the jury  
10:39:13 18 heretofore, then it's in evidence.

10:39:14 19 MR. SHEASBY: Your Honor, the document is in  
10:39:18 20 evidence. The statement or suggestion that USAA has acted  
10:39:23 21 improperly by putting this document in evidence, which is  
10:39:28 22 the purpose of that paragraph, is not a proper -- is not  
10:39:31 23 something that should go before the jury.

10:39:33 24 And so I would -- if there was a mistake, a  
10:39:36 25 mistake was made. But the whole purpose of this was the



10:39:40 1 Court ruled that it was properly used outside the  
10:39:43 2 agreement. And to now cast an aspersion on USAA that  
10:39:47 3 they've acted improperly through this agreement is just --  
10:39:50 4 it's -- it's very, very, very toxic to the jury.

10:39:54 5 THE COURT: Tell me, Mr. Hill, what's your  
10:39:57 6 intent -- what you're trying to get across with this.

10:40:00 7 MR. HILL: Yes, Your Honor. I haven't cast any  
10:40:01 8 aspersions on this document. And my point is not to say  
10:40:04 9 that they breached their contract.

10:40:05 10 My point is to say that this was an attempt by  
10:40:08 11 parties to have a candid, confidential conversation where  
10:40:12 12 they openly discuss things without worries of future  
10:40:17 13 repercussions. That's what the parties were trying to  
10:40:19 14 negotiate.

10:40:19 15 MR. SHEASBY: This is not --

10:40:20 16 MR. HILL: This is not an ask for a license.

10:40:21 17 MR. SHEASBY: Your Honor, we'll stipulate to that.  
10:40:24 18 You can give that instruction to the jury.

10:40:28 19 MR. MELSHEIMER: Your Honor, this exhibit is in  
10:40:30 20 evidence.

10:40:30 21 THE COURT: I understand it's in evidence.

10:40:31 22 MR. MELSHEIMER: If it's in evidence, you get to  
10:40:33 23 use it for any purpose. They didn't limit it. This will  
10:40:37 24 be going back on what we've done with every other exhibit.

10:40:39 25 THE COURT: Well, Mr. Melsheimer, first of all,

10:40:42 1 these are the two lawyers who have this witness. I'm going  
10:40:45 2 to hear from them and not from everybody else.

10:40:47 3 Let me see it again. Which part of this have you  
10:41:07 4 got displayed or you intend to?

10:41:10 5 MR. HILL: What I have, Your Honor, is right here,  
10:41:11 6 this first part --

10:41:11 7 THE COURT: Paragraphs -- Subparagraphs 1 and 2?

10:41:13 8 MR. HILL: On then, also, 3, it says: The  
10:41:16 9 contents of any documents or other communications shall be  
10:41:17 10 deemed kept strictly confidential.

10:41:22 11 MR. BUNT: Your Honor, that serves no other  
10:41:24 12 purpose than to show that we're somehow violating the  
10:41:27 13 agreement.

10:41:30 14 MR. HILL: Those are the facts, Your Honor. We  
10:41:34 15 are entitled to that. They argued to get it in with  
10:41:48 16 respect to their agreement, Your Honor. They can't have it  
10:41:51 17 both ways.

10:42:08 18 THE COURT: Well, it's in evidence. It's been  
10:42:10 19 admitted without a redaction. I'm not going to reopen  
10:42:14 20 exhibits or try to impose a redaction that's not there now  
10:42:19 21 in the middle of trial.

10:42:20 22 Rule 408 is still Rule 408, Mr. Hill.

10:42:24 23 MR. HILL: Yes, sir.

10:42:25 24 THE COURT: I don't expect you to try to tar and  
10:42:28 25 feather the Plaintiff with some violation of a settlement

10:42:31 1 agreement before some -- you know, I -- I'm not going to  
10:42:37 2 permit it to be used in express contravention of what  
10:42:41 3 Rule 408 stands for.

10:42:43 4 MR. HILL: Absolutely.

10:42:44 5 THE COURT: But outside of that, it's free to be  
10:42:46 6 used.

10:42:46 7 MR. HILL: Thank you.

10:42:47 8 MR. MELSHEIMER: Thank you, Your Honor.

10:42:47 9 (Bench conference concluded.)

10:42:51 10 THE COURT: Let's proceed.

10:42:53 11 MR. HILL: Thank you, Your Honor.

10:42:54 12 Q. (By Mr. Hill) Mr. Weinstein --

10:42:55 13 MR. HILL: Can we have Exhibit 162, again,  
10:42:59 14 Mr. Barnes, the section we were on?

10:43:02 15 Q. (By Mr. Hill) All right. Mr. Weinstein, we were  
10:43:04 16 looking at this document. We had looked at the first two  
10:43:07 17 pages, and, as I mentioned, these are terms that are being  
10:43:10 18 discussed to have discussions, right?

10:43:12 19 A. Yes, sir.

10:43:12 20 Q. And the parties are trying to agree here on how they  
10:43:15 21 can have a candid, confidential, open discussion, right?

10:43:21 22 A. That's fair.

10:43:22 23 Q. They're discussing how they can exchange documents  
10:43:26 24 without those documents being used later, right?

10:43:30 25 A. Correct.

10:43:32 1 MR. HILL: If we can go -- scroll down some,  
10:43:35 2 Mr. -- Mr. Barnes.

10:43:38 3 Q. (By Mr. Hill) They're discussing in Part 3 how they're  
10:43:40 4 going to keep the contents of their discussions and their  
10:43:44 5 correspondence confidential so that they can have open,  
10:43:48 6 candid exchanges, right?

10:43:49 7 A. Yes, sir.

10:43:49 8 Q. And this is -- what the rest of this email string  
10:43:53 9 shows, if we go back up to the next page, 8, 7, 6 -- emails  
10:43:58 10 run back to front.

10:44:00 11 MR. HILL: Let's not go that fast, Mr. Barnes.  
10:44:02 12 Let's go to Page 6, for instance.

10:44:05 13 Q. (By Mr. Hill) What we see here is Wells Fargo's folks  
10:44:11 14 and the people for -- the lawyer for USAA, they're having a  
10:44:15 15 back-and-forth about these terms. Do you see that?

10:44:18 16 A. I do.

10:44:19 17 MR. HILL: Let's go to the next page, Mr. Barnes,  
10:44:21 18 5.

10:44:22 19 Q. (By Mr. Hill) And the Wells Fargo folks are talking to  
10:44:28 20 them, and they're discussing -- they're trying to iron out  
10:44:32 21 these terms. And they're talking about, you know, what  
10:44:35 22 they're uncomfortable with. Here are some steps forward.  
10:44:39 23 Let's go back to the original proposal. Let's find  
10:44:42 24 alternative language, having this back-and-forth. It's not  
10:44:47 25 anybody just ignoring somebody, is it?

10:44:49 1 A. No, they're having a conversation about the terms.

10:44:52 2 Q. And if we look at the dates as we go through, we see  
10:44:55 3 this conversation is taking a little time?

10:44:59 4 A. It is.

10:45:00 5 Q. Move from August -- we're now to November.

10:45:03 6 MR. HILL: Go to the next page, 4, please.

10:45:07 7 Q. (By Mr. Hill) Here we are, again, now in December,  
10:45:10 8 still going back and forth on these terms. And both sides  
10:45:13 9 are suggesting changes and edits. It's a two-way  
10:45:17 10 conversation, agree?

10:45:18 11 A. Agree.

10:45:19 12 MR. HILL: And we go to Page 3. Page 2. Page 1.

10:45:29 13 Q. (By Mr. Hill) Ultimately, we see that they've agreed  
10:45:32 14 on terms finally in February of 2018, and they start trying  
10:45:39 15 to exchange some information. Complex negotiations of this  
10:45:45 16 sort over documents is not uncommon in the business world,  
10:45:48 17 is it, sir?

10:45:49 18 A. That's correct.

10:45:49 19 Q. And they take a little time sometimes?

10:45:53 20 A. Yes, sir.

10:45:53 21 Q. And often the time just to iron out talks is short  
10:46:00 22 compared to the time for them trying to iron out the  
10:46:04 23 substantive differences, right?

10:46:05 24 A. I'm not sure I understand your question, but -- but it  
10:46:12 25 takes -- it takes time to iron out all of this.

10:46:15 1 Q. And you agree with me, Mr. Weinstein, as we established  
10:46:18 2 earlier on the timeline, USAA filed this lawsuit against  
10:46:23 3 Wells Fargo in June of 2018?

10:46:25 4 A. Yes, sir.

10:46:25 5 Q. Did you find in the agreement, as you looked for it,  
10:46:31 6 what we started with, to show me where they asked us to  
10:46:35 7 take a license?

10:46:36 8 A. Well, I don't know -- I don't see that specific  
10:46:41 9 language, but, obviously, that's what this was about.

10:46:44 10 Q. It's not in there, is it, Mr. Weinstein? There's no  
10:46:46 11 ask to take a license in Exhibit 162, is there, sir?

10:46:50 12 A. That's true.

10:46:51 13 Q. All right. Let's talk about two last topics,  
10:46:57 14 Mr. Weinstein.

10:46:57 15 I looked at your CV that you gave us timely when  
10:47:01 16 we started this -- your expert report -- when you gave us  
10:47:03 17 your expert report. You have to tell us, under the rules,  
10:47:07 18 work you've done the past four years, right?

10:47:11 19 A. Yeah, I have to tell something about consulting  
10:47:15 20 engagements and testimony in recent years, that's true.

10:47:17 21 Q. And, Mr. Weinstein, I looked at that list that you gave  
10:47:20 22 us, and you had -- by my account, you had 28 engagements on  
10:47:28 23 it. Sound right?

10:47:34 24 A. That sounds about right. I -- I don't see it in front  
10:47:37 25 of me, but that sounds right.

10:47:38 1 Q. Okay.

10:47:39 2 A. I wouldn't be surprised.

10:47:41 3 Q. And of those 28 engagements, Mr. Weinstein, I counted  
10:47:44 4 up there -- you tell us whether you are working for  
10:47:47 5 Plaintiff or Defendant for each of those, don't you, sir?

10:47:49 6 A. Yes, sir, I do.

10:47:50 7 Q. And if we look at those 28, 27 of the 28 are for the  
10:47:55 8 Plaintiff, correct?

10:47:55 9 A. That sounds right.

10:47:56 10 Q. So in the last four years, you've testified almost  
10:48:00 11 exclusively for Plaintiffs in lawsuits, correct?

10:48:03 12 A. When I'm testifying, that's true, yes, sir.

10:48:05 13 Q. And then last thing, Mr. Weinstein, you're being paid  
10:48:08 14 for your work in this case, correct?

10:48:10 15 A. No, my -- the company I work for, Micronomics, receives  
10:48:17 16 compensation for my time, but I'm an employee. I don't own  
10:48:21 17 Micronomics.

10:48:21 18 Q. Well, you're a -- you're a partner. You have some  
10:48:24 19 ownership in the company?

10:48:25 20 A. No, sir, I have zero ownership. I'm an employee.

10:48:28 21 Q. But your time is not for free, correct?

10:48:30 22 A. Correct. My time is not for free. The company that I  
10:48:34 23 work for is compensated for my time.

10:48:35 24 Q. And what rate does your company charge for your time,  
10:48:38 25 Mr. Weinstein?

10:48:38 1 A. \$750.00 per hour.

10:48:40 2 Q. And how many hours have you charged -- has your company  
10:48:44 3 charged USAA for your work in this case?

10:48:46 4 A. Well, up to October, it was about 125 hours, and there  
10:48:54 5 have been a fair number of hours since then.

10:48:57 6 Q. Okay. And so what do you think is the total amount  
10:49:00 7 your company is going to be owed by USAA for your work in  
10:49:02 8 this case?

10:49:04 9 A. Well, we'd have to do the math again, but it's probably  
10:49:09 10 200 hours of me, times 750, would be \$150,000.00, plus time  
10:49:17 11 spent by my staff, so somewhere in the neighborhood of  
10:49:23 12 200 -- \$250,000.00 would be the charge to USAA by  
10:49:29 13 Micronomics.

10:49:31 14 Q. Thank you, Mr. Weinstein.

10:49:33 15 MR. HILL: I'll pass the witness, Your Honor.

10:49:34 16 THE COURT: Redirect, Mr. Bunt?

10:49:36 17 MR. BUNT: Yes, Your Honor.

10:49:38 18 THE COURT: Are you going to use these  
10:49:39 19 demonstratives?

10:49:40 20 MR. BUNT: I don't believe so, Your Honor.

10:49:42 21 THE COURT: Then Mr. Hill needs to take them down.  
10:50:06 22 You may proceed with your redirect.

10:50:08 23 MR. BUNT: Thank you, Your Honor.

10:50:08 24 REDIRECT EXAMINATION

10:50:10 25 BY MR. BUNT:



10:50:10 1 Q. Good morning, Mr. Weinstein.

10:50:11 2 A. Good morning.

10:50:12 3 Q. Let's start where we left off. Over the course of your  
10:50:15 4 career, have you worked for both -- provided consulting  
10:50:19 5 services for both Plaintiffs and Defendants in lawsuits and  
10:50:22 6 in general litigation matters?

10:50:24 7 A. Yes, sir, I have.

10:50:27 8 Q. And you testified that the rate that you charge for  
10:50:31 9 services -- that your company charges for services, is it  
10:50:36 10 your understanding that Wells Fargo's damage expert also  
10:50:39 11 charges for his time or his company charges for the time?

10:50:43 12 A. Yes, sir.

10:50:44 13 Q. Is that fairly standard in this industry?

10:50:46 14 A. It is.

10:50:47 15 Q. So if we could reorient ourselves, I'd like to go to  
10:50:52 16 the timeline that was provided during the Plaintiff's  
10:50:56 17 opening statement.

10:50:57 18 MR. BUNT: I believe this was Slide No. 19,  
10:51:01 19 Mr. Huynh. There we go.

10:51:43 20 Q. (By Mr. Bunt) So at the beginning of this, back in  
10:51:49 21 August of 2009, we have USAA launching general -- first  
10:51:59 22 generation MRDC. Do you see that, sir?

10:52:01 23 A. I do, sir.

10:52:01 24 Q. And I believe there was a reference made the other day,  
10:52:05 25 or possibly in -- in Mr. Hill's timeline, about 2008, Mitek

10:52:14 1 announcing a first app. Do you recall testimony from  
10:52:17 2 Mr. Bueche regarding whether that Mitek app actually worked  
10:52:21 3 at that point?

10:52:22 4 A. You know, I was -- I was here for his testimony. I  
10:52:26 5 don't recall it specifically.

10:52:27 6 Q. And then if we'll look on here, in August -- it's your  
10:52:32 7 understanding that in August of 2009, USAA launched its  
10:52:37 8 MRDC -- it's first generation MRDC system, correct?

10:52:42 9 A. Yes, that's my understanding.

10:52:43 10 Q. And then also in August of 2009, USAA filed its patents  
10:52:51 11 for the -- the patents that are involved in this suit; is  
10:52:54 12 that your understanding?

10:52:57 13 A. Yes, sir, it is.

10:52:58 14 MR. HILL: Objection, leading, Your Honor.

10:53:01 15 THE COURT: Restate your question, Mr. Bunt.

10:53:03 16 MR. BUNT: Sure.

10:53:04 17 Q. (By Mr. Bunt) When did USAA file for the  
10:53:08 18 patents-in-suit?

10:53:08 19 A. My recollection is that it was in 2009.

10:53:11 20 Q. And then when was it that USAA actually launched its  
10:53:17 21 auto capture Deposit@Mobile system?

10:53:21 22 A. That was in 2013 --

10:53:23 23 MR. HILL: Your Honor, may we approach?

10:53:24 24 THE COURT: Approach the bench.

10:53:25 25 (Bench conference.)

10:53:31 1 MR. HILL: I'm sorry, Your Honor.

10:53:31 2 And, Mr. Bunt.

10:53:32 3 Your Honor, but his co-counsel asked me to, he  
10:53:35 4 would like me to obscure this demonstrative.

10:53:38 5 THE COURT: We should turn it around.

10:53:40 6 One other thing while we're all up here -- let's  
10:53:43 7 go off the record.

10:53:47 8 MR. HILL: Yes, sir.

10:53:47 9 (Off-the-record discussion.)

10:53:49 10 THE COURT: All right. Let's go back on the  
10:53:51 11 record.

10:53:51 12 (Bench conference concluded.)

10:54:06 13 Q. (By Mr. Bunt) And then, Mr. Weinstein, when was the  
10:54:08 14 lawsuit filed in this case?

10:54:09 15 A. June of 2018.

10:54:13 16 Q. So there were some questions asked of you by Mr. Hill  
10:54:16 17 at the beginning about the use of 2010, 2011, and 2012  
10:54:24 18 documents during your direct examination yesterday. Do you  
10:54:27 19 recall those questions?

10:54:27 20 A. I do.

10:54:28 21 Q. Can you explain to us why did you use 2010 to 2012  
10:54:34 22 documents for your explanation to the jury?

10:54:37 23 A. I -- I considered those documents because it was during  
10:54:40 24 that time period that Wells Fargo was confronting the need  
10:54:48 25 to address the possibility of providing consumers with

10:54:53 1 MRDC. And it's -- it's typical for companies to create  
10:55:03 2 those kind of documents and do those kinds of studies in  
10:55:06 3 advance of making decisions to launch new products like  
10:55:09 4 MRDC.

10:55:11 5 So those are exactly the documents that I would  
10:55:13 6 want to look at in order to get an idea as to what Wells  
10:55:17 7 Fargo is -- is thinking about in connection with whether or  
10:55:23 8 not it should provide this kind of functionality to its  
10:55:26 9 customer base.

10:55:26 10 Q. Now, do you recall in our direct examination yesterday  
10:55:35 11 during the latter half -- the latter half of our  
10:55:39 12 discussions, you actually walked the jury through the  
10:55:41 13 calculations for damages?

10:55:46 14 A. Yes, sir.

10:55:46 15 Q. Did those damage numbers that you went through come  
10:55:49 16 from the 2010 to 2012 time period, or do they come from a  
10:55:55 17 different time period?

10:55:56 18 A. No, the damage numbers reflect the benefits obtained by  
10:56:06 19 Wells Fargo from using the patents beginning in 2016,  
10:56:12 20 December 2016. That is the damage period.

10:56:16 21 Q. And then there were some questions asked of you earlier  
10:56:20 22 about including things like cell phones, processors, bank  
10:56:27 23 systems that clear checks, other ideas that may not be  
10:56:30 24 attributable to these patents. Are those -- are you  
10:56:34 25 including those features in the damages that you say should

10:56:38 1 go to USAA?

10:56:39 2 A. No, none of those features or those functionalities are  
10:56:44 3 included in any way of the damages that I've calculated. I  
10:56:49 4 say that because the damages that I've calculated are  
10:56:53 5 limited to the incremental contribution of the  
10:56:57 6 patents-in-suit to the accused products here. And the  
10:57:08 7 results that I get are achieved after apportioning down by  
10:57:13 8 that 40 percent figure that I testified to yesterday and  
10:57:20 9 Mr. Calman testified to.

10:57:23 10 MR. BUNT: Mr. Huynh --

10:57:23 11 A. And that's a way of -- and let me just finish. That's  
10:57:27 12 a way of accounting for all of those multiple features.

10:57:30 13 MR. BUNT: Mr. Huynh, could we go to  
10:57:32 14 Mr. Weinstein's Demonstrative Slide No. 43 that we were  
10:57:39 15 using yesterday? Slide 43.

10:57:57 16 Q. (By Mr. Bunt) Is this the apportionment that you were  
10:57:59 17 discussing a moment ago, Mr. Weinstein?

10:58:00 18 A. Yes. So the \$932 million on the left reflects the  
10:58:06 19 benefits associated with auto capture-enabled MRDC.

10:58:09 20 Q. And the apportionment figure of 40 percent in the  
10:58:13 21 middle, where did that number come from?

10:58:15 22 A. That comes from the analyses conducted by Mr. Calman,  
10:58:20 23 and so I used the results of those analyses to apportion  
10:58:24 24 out all of the other kinds of features that contribute to  
10:58:31 25 the \$932 million so as to wind up with benefits that are

10:58:37 1 attributable to the patents-in-suit.

10:58:40 2 MR. BUNT: And can we go to Slide No. 14,  
10:58:43 3 Mr. Huynh?

10:58:45 4 Q. (By Mr. Bunt) What did Mr. Saffici have to say about  
10:58:55 5 this value of the auto capture functionality that we're  
10:58:57 6 discussing in this case?

10:58:58 7 A. He said it's widely acknowledged as the foundation for  
10:59:03 8 successful mobile check deposits.

10:59:06 9 MR. BUNT: And then if we could go to Slide  
10:59:08 10 No. 15.

10:59:10 11 Q. (By Mr. Bunt) And what did Mr. Ajami have to say about  
10:59:14 12 this auto capture?

10:59:16 13 A. He had no basis to disagree with the statement  
10:59:23 14 contained in that Futurion Report that I was asked about  
10:59:26 15 earlier today; that auto capture must now be treated as a  
10:59:30 16 must-have feature.

10:59:31 17 Q. Were you present for the opening statement that  
10:59:36 18 Mr. Melsheimer gave yesterday [sic]?

10:59:38 19 A. I was.

10:59:39 20 MR. BUNT: Mr. Huynh, could you pull up  
10:59:44 21 the afternoon transcript --

10:59:44 22 A. The opening statement was maybe two days.

10:59:47 23 Q. (By Mr. Bunt) Two days, I apologize.

10:59:49 24 MR. BUNT: Mr. Huynh, could you pull up the day  
10:59:53 25 one afternoon transcript, Page 56, Lines 25 through

10:59:58 1 Page 57, Line 8?

11:00:00 2 Q. (By Mr. Bunt) So do you recall Mr. Melsheimer making a  
11:00:12 3 comment that what USAA wanted to get rid of, and he held  
11:00:19 4 out his hands, was they wanted to get rid of pushing the  
11:00:23 5 button on the camera, and that's what's called auto  
11:00:25 6 capture. Do you recall that?

11:00:26 7 A. I do.

11:00:27 8 Q. And you've heard -- have you heard Mr. Hill refer  
11:00:31 9 several times to the specific method, the specific auto  
11:00:38 10 capture feature?

11:00:38 11 A. Yes, sir.

11:00:39 12 Q. And is that consistent -- this idea of just getting rid  
11:00:43 13 of the pushing the camera button, is that consistent with  
11:00:47 14 how Mr. Bueche described the value of the patented  
11:00:50 15 technology?

11:00:50 16 A. No.

11:00:52 17 Q. What does the auto capture contribute to the whole MRDC  
11:00:58 18 functionality?

11:01:00 19 A. Well, it provides something to consumers that the  
11:01:05 20 market is clearly insisting upon today, which is the  
11:01:10 21 ability to easily effectuate a mobile deposit because the  
11:01:18 22 functionality taught by the patents produces a successful  
11:01:25 23 capture of -- of the -- of the check, which is what the  
11:01:30 24 bank needs and what consumers are insisting upon.

11:01:34 25 MR. BUNT: Mr. Huynh, can we go to Mr. Weinstein's

11:01:37 1 Slide No. 9?

11:01:39 2 Q. (By Mr. Bunt) Mr. Weinstein, is this the federal  
11:01:52 3 statute that deals with damages in patent suits?

11:01:54 4 A. Yes, sir.

11:01:55 5 Q. And under this federal law that guides the Court and  
11:02:01 6 the parties and experts like yourself and -- and  
11:02:07 7 Dr. Gerardi, is the reasonable royalty based on the value  
11:02:10 8 of the patent to USAA, or is it based on the value of the  
11:02:14 9 patents to Wells Fargo?

11:02:14 10 A. It's based on the value of the patents to Wells Fargo,  
11:02:19 11 and that's why it says that payment should be for use made  
11:02:24 12 of the invention by the infringer.

11:02:31 13 MR. BUNT: Let's turn to Slide No. 18 from your  
11:02:34 14 presentation.

11:02:39 15 Q. (By Mr. Bunt) Does the value that you're considering  
11:02:41 16 in this reasonable royalty analysis come from the benefits  
11:02:44 17 that you discussed yesterday?

11:02:47 18 A. Yes, sir.

11:02:48 19 Q. And would you mind reorienting the jury as to what  
11:02:51 20 those three benefits are?

11:02:54 21 A. Sure. The benefits are cost savings associated with  
11:03:00 22 the fact that it costs Wells Fargo considerably less to  
11:03:06 23 process a mobile deposit than it does to process a deposit  
11:03:09 24 at the bank or by an ATM.

11:03:12 25 It also produces cost savings for Wells Fargo that



11:03:17 1 allows it to close branches and plan on closing additional  
11:03:23 2 branches because of the growth of mobile deposits, such  
11:03:31 3 that they don't need those branches anymore. So those are  
11:03:35 4 the cost selling -- saving elements.

11:03:38 5 The secondary has to do with increased profits  
11:03:42 6 associated with mobile deposits that Wells Fargo makes.

11:03:45 7 And the third are the ecosystem benefits that they  
11:03:48 8 get with respect to their brand name and reputation and the  
11:03:52 9 fact that they can offer a product that consumers are  
11:03:56 10 insisting upon.

11:03:59 11 Q. So let's go to Slide No. 37 from your presentation.

11:04:02 12 I don't believe that there were questions asked of  
11:04:05 13 you about the cost savings associated with moving from an  
11:04:15 14 ATM or teller to mobile deposit, but there were some  
11:04:18 15 questions raised about capital savings. And can you remind  
11:04:22 16 the jury what capital savings are?

11:04:24 17 A. Yeah. Those are savings associated with the fact that  
11:04:28 18 Wells Fargo can serve as its customer base having fewer  
11:04:32 19 branches, and that's consistent with the fact that they've  
11:04:34 20 closed approximately 200 branches in the last year and have  
11:04:38 21 published information indicating they plan to close 800  
11:04:42 22 more branches. And that's because of what mobile deposits  
11:04:46 23 mean in terms of their ability to serve their current  
11:04:50 24 customer base.

11:04:50 25 Q. So there were some questions asked of you by Mr. Hill,

11:04:57 1 and he asked you to divide out the number of checks that  
11:05:00 2 were being deposited in each branch and how many extra  
11:05:04 3 checks that would be per teller, and I believe you said you  
11:05:07 4 didn't disagree with the math.

11:05:08 5 Was there something else that you wanted to say  
11:05:11 6 about that calculation that Mr. Hill was asking you about?

11:05:13 7 A. Well, I think I've already -- I made the point. The  
11:05:17 8 point is clear, Bank of America is closing branches. Wells  
11:05:22 9 Fargo is closing branches. Not only are they closing  
11:05:25 10 branches, they're -- they're bragging about it in their  
11:05:29 11 annual reports and in the trade press because what they're  
11:05:33 12 doing is they're telling their shareholders that they're  
11:05:36 13 serving their market better. They're saving money by not  
11:05:40 14 processing mobile deposits. So that -- that's the point.

11:05:45 15 And with respect to this slide, what I did is I  
11:05:48 16 took the information that was available, mostly from Wells  
11:05:52 17 Fargo and then Bank of America, and was able to calculate a  
11:05:57 18 minimum estimate of the amount of money that -- that is  
11:06:02 19 being saved by virtue of the fact that the customer base  
11:06:06 20 for Wells Fargo can be served with fewer branches, and that  
11:06:12 21 was just the physical branch and the equipment in it. It  
11:06:16 22 didn't include land or the tellers or the administrators,  
11:06:24 23 etc. So there's a very significant savings here thanks to  
11:06:28 24 mobile deposits.

11:06:28 25 MR. BUNT: Mr. Huynh, can we go to Plaintiff's

11:06:30 1 Exhibit No. 14 and go to the third page, 14.3? And could  
11:06:37 2 we pull out the bullet point of Channel Optimization? It's  
11:06:43 3 under Secondary Benefits.

11:06:54 4 Q. (By Mr. Bunt) And, Mr. Weinstein, can you read that  
11:06:57 5 first two sentences?

11:06:59 6 A. It says: Directional savings from redistributing  
11:07:02 7 deposit transactions from more costly store/ATM channels.  
11:07:08 8 Benefits include teller reallocation of resources when we  
11:07:12 9 reach high enough volumes.

11:07:14 10 Q. What does that tell you about the use of teller's time  
11:07:17 11 if they have an adequate MRDC system?

11:07:19 12 A. Well, it says that existing tellers would be freed up  
11:07:28 13 to do other functions, rather than stand there and accept  
11:07:32 14 deposits.

11:07:32 15 Q. There were also some questions asked of you about the  
11:07:39 16 last category of benefits, ecosystem benefits and Zelle.  
11:07:44 17 Do you recall those questions, Mr. Weinstein?

11:07:45 18 A. I do.

11:07:46 19 Q. And I believe there was a suggestion that banks, like  
11:07:52 20 Wells Fargo, share Zelle with other banks. Do you recall  
11:07:55 21 that statement?

11:07:58 22 A. I'm not sure about the statement. They don't share it.  
11:08:01 23 There's a consortium of banks that provide it in exchange  
11:08:06 24 for fees that banks like USAA have to pay that consortium  
11:08:13 25 whenever there's a Zelle transaction.

11:08:14 1 Q. And what is the ecosystem benefit of mobile deposit to  
11:08:19 2 Wells Fargo?

11:08:20 3 A. Well, when -- when banks like Wells Fargo provide more  
11:08:30 4 services to customers, what they're doing is they're making  
11:08:32 5 their bank more desirable. So the ecosystem benefit in  
11:08:35 6 this case is by -- is that by offering Zelle, for instance,  
11:08:43 7 it encourages customers to bank with that bank because that  
11:08:46 8 service is available.

11:08:47 9 And so I use an estimate of the fees charged by  
11:08:51 10 this consortium of banks that include Wells Fargo when  
11:08:58 11 Zelle is used as an estimate of the ecosystem benefit.

11:09:00 12 Q. And does Zelle -- with the Zelle, are the features free  
11:09:06 13 to the customers who are using it?

11:09:07 14 A. Yes, sir.

11:09:09 15 Q. Is the mobile deposit feature free to customers who are  
11:09:13 16 using it?

11:09:14 17 A. It is.

11:09:15 18 Q. Do -- does Zelle and MRDC cost banks money to offer to  
11:09:22 19 their customers?

11:09:25 20 A. Yes, they do.

11:09:26 21 Q. Do both Zelle and MRDC involve access to funds?

11:09:30 22 A. Yes.

11:09:31 23 Q. Are both Zelle and MRDC digital tools?

11:09:37 24 A. They are.

11:09:37 25 Q. Do both of them involve money movement?

11:09:41 1 A. They do.

11:09:43 2 Q. Do you have an opinion as to whether both of them drive  
11:09:46 3 people or customers to apps?

11:09:48 4 A. Yeah, they each contribute to bringing customers to  
11:09:51 5 apps. That's why they're provided.

11:09:53 6 Q. And so just one final time, if you could explain what  
11:10:01 7 your use of Zelle is, for the jury's purposes, for your  
11:10:06 8 calculations?

11:10:06 9 A. I -- I use an estimate of the cost that banks incur to  
11:10:09 10 process a Zelle transaction, which is 60 cents. That  
11:10:15 11 provides banks with an ecosystem benefit which they  
11:10:18 12 recognize as a benchmark for estimating the ecosystem  
11:10:23 13 benefit that's provided to Wells Fargo in connection with  
11:10:26 14 its use of the -- the patents-in-suit.

11:10:31 15 Q. Mr. Weinstein --

11:10:36 16 MR. BUNT: Actually, Mr. Huynh, could you turn to  
11:10:38 17 Plaintiff's Exhibit No. 5, the first page?

11:10:46 18 Q. (By Mr. Bunt) Mr. Weinstein, can you identify this  
11:10:48 19 document for the ladies and gentlemen of the jury?

11:10:50 20 A. Yes. This is the Futurion Report that I was asked  
11:10:54 21 about during my cross-examination. It's also a document  
11:10:58 22 that I've seen before and relied on in connection with my  
11:11:01 23 work.

11:11:01 24 MR. BUNT: And let's take a look at the second  
11:11:06 25 page of that document.

11:11:07 1 Q. (By Mr. Bunt) And do you see where it says "the bar  
11:11:15 2 has risen"?

11:11:16 3 MR. BUNT: Call that out.

11:11:17 4 A. Yes.

11:11:18 5 Q. (By Mr. Bunt) And then if you could read -- well, just  
11:11:20 6 read that first sentence, if you don't mind, after "the bar  
11:11:24 7 has risen."

11:11:25 8 A. It says: The bar has risen with customer experience  
11:11:30 9 rankings, shifting from 2016. Wells Fargo climbed sixth  
11:11:35 10 place last year to second place this year with an improved  
11:11:38 11 user experience and great use of real-time capabilities,  
11:11:42 12 while Chase slipped from the top 10 due to such areas as  
11:11:48 13 manual capture.

11:11:48 14 Q. So where was Chase before 2017 with its rankings?

11:11:56 15 A. Well, we know from this that it was in the top 10.

11:12:00 16 Q. And according to the author of Futurion, it slipped  
11:12:04 17 from the top 10 due to areas such as what?

11:12:07 18 A. Manual capture.

11:12:12 19 MR. BUNT: And then if we could go to Plaintiff's  
11:12:14 20 Exhibit No. 256.

11:12:17 21 Q. (By Mr. Bunt) And if you could tell the ladies and  
11:12:22 22 gentlemen of the jury what we're looking at now?

11:12:24 23 A. So this is the -- the same report -- Futurion Report,  
11:12:27 24 except it's for the next year, 2018. We've been looking at  
11:12:30 25 the one for 2017.

11:12:31 1 Q. So do you recall Mr. Hill asking you questions about  
11:12:35 2 the fact that Chase was able to offer manual capture and do  
11:12:40 3 fine with its business?

11:12:42 4 A. I do.

11:12:44 5 MR. BUNT: So let's take a look at the second page  
11:12:47 6 of PX-256.2, and if we could go to the third paragraph.

11:13:01 7 A. I see it.

11:13:01 8 Q. (By Mr. Bunt) Okay. And does this say something about  
11:13:06 9 Chase in this?

11:13:06 10 A. Yes. So this -- this report, which is 2018, a year  
11:13:12 11 after the previous report, points out that Chase made what  
11:13:17 12 are described as dramatic upgrades, including adding --  
11:13:21 13 adding auto capture, which allowed it to leap from the  
11:13:26 14 bottom third in 2017 to the top third, namely sixth place.

11:13:32 15 Q. And to what did the Futurion author attribute that leap  
11:13:36 16 to?

11:13:37 17 A. The leap is attributed, at least in this sentence, to  
11:13:43 18 Chase's addition of auto capture functionality.

11:13:48 19 MR. BUNT: Mr. Huynh, could we go to Mr. Calman's  
11:13:53 20 slides, No. PDX-3.8?

11:14:02 21 Q. (By Mr. Bunt) Mr. Weinstein, Mr. Hill was asking you  
11:14:05 22 some questions about the difference that USAA experienced  
11:14:09 23 in its failure rates before auto capture and after auto  
11:14:13 24 capture. Do you recall that -- that colloquy you had with  
11:14:16 25 him?

11:14:19 1 A. I do.

11:14:20 2 Q. And he -- he drew up on the board that there was a  
11:14:22 3 16 percent failure rate before, and then, afterwards, there  
11:14:25 4 was a 9 percent failure rate. Do you recall that?

11:14:28 5 A. I do.

11:14:30 6 Q. And does that discussion fully capture the value of the  
11:14:38 7 auto capture, the 7 percent?

11:14:43 8 A. Well, no, and as -- as was pointed out yesterday,  
11:14:49 9 the -- the rate of failure actually increased by more than  
11:14:56 10 41 percent, but it's -- it's all -- it's apparent from the  
11:15:00 11 numbers themselves.

11:15:02 12 In other words, there's -- you go from 16 percent  
11:15:06 13 failure rate to 9 percent failure rate. And one way of  
11:15:10 14 looking at that is a 7 percent change, but actually it's a  
11:15:15 15 41 percent reduction in the failure rate.

11:15:16 16 MR. BUNT: Can we see, Mr. Huynh, Plaintiff's  
11:15:18 17 Exhibit No. 31, Page 11?

11:15:27 18 Q. (By Mr. Bunt) And, Mr. Weinstein, is this data that  
11:15:29 19 was provided by Wells Fargo concerning auto capture and  
11:15:34 20 manual rates of success and failure?

11:15:36 21 A. Yes.

11:15:37 22 Q. And if we take a look here at the -- up at the top,  
11:15:43 23 September of 2018, you'll see there's a -- in the second  
11:15:48 24 column, it says: MiSnap video. Do you see that?

11:15:50 25 A. I do.



11:15:51 1 Q. And it's your understanding that that's for auto  
11:15:54 2 capture?

11:15:54 3 A. Correct.

11:15:54 4 Q. And then if we go over to the right-hand column, what  
11:15:57 5 is the failure rate for auto capture in September of 2018?

11:16:04 6 A. 11 percent.

11:16:04 7 Q. And then if we go down to the MiSnap manual rate, this  
11:16:10 8 is -- is that Wells Fargo's manual capture?

11:16:14 9 A. Yes, sir.

11:16:14 10 Q. And then what is the failure rate for September 2018?

11:16:23 11 A. 35 percent.

11:16:25 12 Q. And so the difference in failure and success rates  
11:16:31 13 is -- is 11 percent failure for auto capture, and it's 35  
11:16:35 14 percent for manual?

11:16:36 15 A. Yes, sir.

11:16:36 16 Q. And then if we skip down to, let's say, September of  
11:16:43 17 2018 for the Android product, what is the auto capture  
11:16:48 18 failure rate?

11:16:49 19 A. It's about 12 percent.

11:16:56 20 Q. And then if we go down to September 18 -- September  
11:17:01 21 2018, the MiSnap manual, what is the failure rate for that?

11:17:05 22 A. 38 percent.

11:17:06 23 Q. Are there costs associated with these failure rates?

11:17:11 24 A. Yes, there are. There are costs to the banks.

11:17:16 25 Q. And what are those costs?

11:17:18 1 A. Well, the failure rate means that the bank now has to  
11:17:21 2 figure out all of the details associated with that mobile  
11:17:26 3 deposit. So it's got to get the -- the account numbers  
11:17:29 4 correct, and it's got to get the amounts correct and the  
11:17:32 5 parties correct. And so that has had to now be done  
11:17:35 6 manually at the bank, and that requires the bank to incur  
11:17:40 7 costs.

11:17:41 8 Q. Now, do you recall being asked questions implying that  
11:17:44 9 Wells Fargo could just simply switch to the manual capture  
11:17:48 10 system instead of using auto capture?

11:17:51 11 A. Yes.

11:17:55 12 MR. BUNT: Mr. Huynh, can we pull up Plaintiff's  
11:17:58 13 Exhibit 1062?

11:18:00 14 Q. (By Mr. Bunt) Mr. Weinstein, when did USAA start --  
11:18:33 15 it's okay. Mr. Weinstein, we'll -- we'll just move on.

11:18:36 16 When is your recollection of when Wells Fargo --  
11:18:39 17 I'm sorry, when USAA began marking its mobile applications  
11:18:45 18 with its patent numbers?

11:18:47 19 A. You know, as I sit here, I don't have that in mind.

11:18:49 20 Q. Do you recall that number to be December of 2016?

11:18:53 21 A. Yes. I mean, that's the beginning of the damage  
11:18:56 22 period, so for sure by then.

11:18:58 23 Q. And then Mr. Hill asked you a number of questions about  
11:19:03 24 a letter or email that --

11:19:06 25 MR. BUNT: Let's go back to PX-1062.

11:19:18 1 Q. (By Mr. Bunt) So does this show that in December of  
11:19:20 2 2016 --

11:19:21 3 MR. BUNT: If we could go a little farther down.

11:19:22 4 A. Got it.

11:19:24 5 Q. (By Mr. Bunt) -- 2000 -- December of 2016, that  
11:19:27 6 Wells -- I apologize -- that USAA began marking its mobile  
11:19:30 7 application with its patent numbers?

11:19:32 8 A. I believe so.

11:19:33 9 Q. And then did USAA reach out and email back and forth  
11:19:41 10 with Wells Fargo back in August of 2017 about licensing?

11:19:45 11 A. Yes. We -- we looked at that earlier.

11:19:48 12 Q. Did Wells Fargo take a license to the patents after  
11:19:52 13 receiving those emails from USAA?

11:19:55 14 A. No.

11:19:56 15 Q. Did Wells Fargo turn off the auto capture functionality  
11:20:01 16 after it received those letters?

11:20:02 17 A. It did not.

11:20:03 18 Q. During the past two years and two months, has Wells  
11:20:11 19 Fargo removed auto capture from its app?

11:20:12 20 A. Not as far as I know, no.

11:20:14 21 Q. You understand that it claims it could switch to just  
11:20:18 22 as good manual functionality; is that your understanding?

11:20:21 23 A. Yes, sir.

11:20:21 24 Q. Has it switched over to this just as good manual  
11:20:25 25 functionality?

11:20:25 1 A. No. It offers auto capture.

11:20:27 2 Q. In fact, has Wells Fargo released new versions of the  
11:20:34 3 accused auto capture functionality since receiving USAA's  
11:20:37 4 letter back in 2017?

11:20:39 5 A. It has.

11:20:41 6 MR. BUNT: I'll pass the witness.

11:20:43 7 Thank you, sir.

11:20:44 8 THE COURT: Is there additional cross, Mr. Hill?

11:20:46 9 MR. HILL: Briefly, Your Honor.

11:20:47 10 THE COURT: Counsel, approach the bench.

11:20:50 11 Mr. Bunt and Mr. Hill will be adequate.

11:20:57 12 (Bench conference concluded.)

11:20:57 13 MR. HILL: I know you've got to go, Judge.

11:20:57 14 THE COURT: How long are you going to need?

11:20:58 15 MR. HILL: If you give me five minutes, I think I  
11:21:00 16 can wrap it up.

11:21:01 17 THE COURT: That's fine. Let's go.

11:21:03 18 (Bench conference concluded.)

11:21:05 19 THE COURT: Let's proceed.

11:21:06 20 MR. HILL: Thank you, Your Honor.

11:21:06 21 RECROSS-EXAMINATION

11:21:08 22 BY MR. HILL:

11:21:08 23 Q. Mr. Weinstein, I want to just hit a couple of things  
11:21:11 24 that you discussed there with Mr. Bunt.

11:21:19 25 First off, Mr. Weinstein, you were talking about

11:21:22 1 some opening statement comments by Mr. Melsheimer. I want  
11:21:25 2 to put up the rest of some context of what he said there  
11:21:28 3 about ways to do mobile deposit.

11:21:30 4 And he went ahead and told the jury, I believe,  
11:21:34 5 that, you're going to learn in the evidence that there are  
11:21:35 6 multiple ways to do -- excuse me, I said mobile deposit.  
11:21:38 7 Ways to do auto capture, and the Plaintiff has a specific  
11:21:42 8 invention they got dealing with auto capture, but that's  
11:21:45 9 not the only way to do it.

11:21:46 10 You understand that's our position in the case,  
11:21:49 11 correct?

11:21:49 12 A. I do, sir.

11:21:50 13 Q. And we didn't conceal that from anybody in opening  
11:21:53 14 statement, did we?

11:21:54 15 A. No.

11:21:54 16 Q. All right. Now, let's take a look, Mr. Weinstein, at  
11:22:08 17 PDX-4.43, the document you were just discussing with  
11:22:21 18 Mr. Bunt, correct?

11:22:21 19 A. Yes, sir.

11:22:21 20 Q. Now, Mr. Weinstein, this is a mathematical calculation.  
11:22:26 21 If this number is wrong because it's overinflated, this  
11:22:31 22 number is also wrong, isn't it?

11:22:33 23 A. Yes, sir.

11:22:34 24 Q. That's the nature of the math?

11:22:35 25 A. Yes, sir.

11:22:36 1 Q. And you can agree with me that the 40 percent being  
11:22:40 2 suggested here is not the same -- certainly a lot larger  
11:22:46 3 number than the 8 percent we talked about earlier, isn't  
11:22:49 4 it?

11:22:49 5 A. Sure.

11:22:53 6 MR. HILL: All right. We can take that down.

11:22:56 7 Q. (By Mr. Hill) And just to be clear, when Mr. Calman  
11:22:58 8 suggested that there was a 41 percent decrease in failure  
11:23:03 9 rate, let's be clear about what he was doing. He was  
11:23:06 10 taking the difference between the success rate -- they said  
11:23:10 11 they were at 84 percent for success, they moved to 91 -- he  
11:23:14 12 was taking the difference, 16 percent, and the difference,  
11:23:20 13 9 percent, and then calculating a percentage between those,  
11:23:23 14 wasn't he?

11:23:24 15 A. He was.

11:23:25 16 Q. And so 8 percent is the mathematically correct  
11:23:29 17 calculation of the improvement in success rate when USAA  
11:23:34 18 moved from manual to auto, correct, sir?

11:23:37 19 A. That -- that's one of the calculations.

11:23:49 20 Q. Now, Mr. Melsheimer -- or, excuse me, Mr. Weinstein,  
11:23:51 21 we -- we saw our timeline earlier.

11:23:54 22 MR. HILL: Can we put our timeline up, just on the  
11:23:57 23 screen, Mr. Barnes? I won't pull the big board back out.

11:24:01 24 Q. (By Mr. Hill) This is our timeline we were looking at  
11:24:05 25 earlier on the board. Remind us one last time,

11:24:09 1 Mr. Weinstein, what is the date of this hypothetical  
11:24:12 2 negotiation?

11:24:12 3 A. It's back around March of 2015.

11:24:17 4 MR. HILL: I'll pass the witness, Your Honor.

11:24:19 5 THE COURT: Redirect?

11:24:19 6 MR. BUNT: Yes, Your Honor.

11:24:24 7 Mr. Huynh, could you pull up Mr. Weinstein's Slide  
11:24:27 8 No. 43?

11:24:34 9 THE TECHNICIAN: 43?

11:24:35 10 MR. BUNT: Yes, sir.

11:24:35 11 REDIRECT EXAMINATION

11:24:40 12 BY MR. BUNT:

11:24:40 13 Q. Mr. Weinstein, this is a slide you were just talking  
11:24:42 14 about with Mr. Hill.

11:24:43 15 A. Yes, sir.

11:24:44 16 Q. On the left-hand side, you've listed out the benefits  
11:24:47 17 of auto-capture-enabled MRDC; is that right?

11:24:50 18 A. Yes, sir.

11:24:50 19 Q. Are these numbers based on data that you received from  
11:24:56 20 Wells Fargo?

11:24:57 21 A. They're based on Wells Fargo data that I used to  
11:25:01 22 calculate the benefits that Wells Fargo obtained.

11:25:05 23 Q. And then based on the apportionment you -- the insight  
11:25:11 24 you gained from Mr. Calman, as well as the testimony you  
11:25:13 25 received from other folks, you apportioned by 40 percent;

11:25:17 1 is that correct?

11:25:17 2 A. Yes, sir.

11:25:17 3 Q. And that led you to the total of \$373 million that we  
11:25:22 4 see on the bottom right-hand corner of this document?

11:25:25 5 A. That is correct.

11:25:27 6 MR. BUNT: And then, Mr. Huynh, if we can go to  
11:25:29 7 Slide 45.

11:25:30 8 Q. (By Mr. Bunt) Out of that \$373 million, if you can  
11:25:38 9 just remind the jury one last time, how did you attribute  
11:25:41 10 that to USAA and to Wells Fargo?

11:25:42 11 A. So the \$373 million is the amount attributed solely by  
11:25:49 12 the patents, and the final step is to distribute that at  
11:25:55 13 the hypothetical negotiation between Wells Fargo and USAA.

11:25:59 14 And the way I -- I had distributed it was to give  
11:26:03 15 Wells Fargo the same rate of return that it gets at the  
11:26:06 16 time on its equity out of that entire pie. And that makes  
11:26:13 17 Wells Fargo completely whole, apart from the fact that it  
11:26:17 18 gets all those other benefits that we looked at, so it's  
11:26:21 19 the return on equity that I used to distribute the  
11:26:28 20 373 million between the two.

11:26:29 21 Q. And the total damages to USAA would be how much?

11:26:32 22 A. \$299.8 million.

11:26:34 23 MR. BUNT: I pass the witness. Thank you, sir.

11:26:37 24 THE COURT: Additional cross-examination?

11:26:38 25 MR. HILL: I have one question left, Your Honor.



11:26:42 1 THE COURT: I can count to one.

11:26:44 2 MR. HILL: I know that's always a risky commitment  
11:26:46 3 to make, Judge.

11:26:55 4 Mr. Barnes, can we see the slide we just had up of  
11:26:58 5 PDX exhibits with the damages calculation, the 40 percent  
11:27:03 6 in the middle? There we go.

11:27:03 7 RECROSS-EXAMINATION

11:27:10 8 BY MR. HILL:

11:27:10 9 Q. Mr. Weinstein, if this number right here in the jury's  
11:27:17 10 estimation is not the value of auto-capture-enabled MRDC  
11:27:22 11 but is just the value of MRDC, it's the wrong number, isn't  
11:27:28 12 it?

11:27:29 13 A. No, sir, it's the right number.

11:27:31 14 MR. HILL: Pass the witness, Your Honor.

11:27:33 15 MR. BUNT: Nothing further.

11:27:34 16 THE COURT: Further redirect?

11:27:35 17 MR. BUNT: No, Your Honor.

11:27:36 18 THE COURT: All right. You may step down,  
11:27:38 19 Mr. Weinstein.

11:27:38 20 THE WITNESS: Thank you, sir.

11:27:43 21 THE COURT: Counsel, approach the bench, please.  
11:27:52 22 (Bench conference.)

11:27:54 23 THE COURT: Two depositions, 15 minutes in length?  
11:28:02 24 Does that finish your case-in-chief?

11:28:04 25 MR. SHEASBY: It does not.

11:28:05 1 THE COURT: Then we'll recess and reconvene on  
11:28:08 2 Monday.

11:28:09 3 MR. SHEASBY: Thank you, Your Honor.

11:28:09 4 MR. MELSHEIMER: Thank you, Your Honor.

11:28:10 5 (Bench conference concluded.)

11:28:10 6 THE COURT: Ladies and gentlemen of the jury, I  
11:28:14 7 told you during jury selection that we would not be able to  
11:28:18 8 conduct the trial this afternoon. The President has  
11:28:24 9 nominated, and the Senate has confirmed, a new United  
11:28:28 10 States District Judge for the Eastern District of Texas.  
11:28:32 11 He will be sworn in this afternoon.

11:28:34 12 Every district judge, every magistrate judge,  
11:28:37 13 every federal judge from Beaumont to Plano will be there.  
11:28:42 14 I have to preside as the Chief Judge of the district. So  
11:28:45 15 that's why we're not going to be able to conduct the trial  
11:28:48 16 this afternoon.

11:28:48 17 We're going to recess until Monday morning at this  
11:28:52 18 juncture. I'm going to ask you to take your notebooks and  
11:28:55 19 leave them on the table, over the weekend, in the jury  
11:28:59 20 room.

11:29:00 21 I'll remind you, please carefully and scrupulously  
11:29:05 22 follow all the instructions I've given you, including not  
11:29:07 23 to discuss or communicate in any way with anyone about  
11:29:12 24 what's happened during this trial or anything related to  
11:29:15 25 this case. What you do with the rest of the afternoon is

11:29:18 1 up to you. I will plan to see you back Monday morning at  
11:29:22 2 our usual time to start as close to 8:30 as possible. And  
11:29:26 3 we will proceed from there.

11:29:27 4 With that, ladies and gentlemen, you're excused  
11:29:29 5 until Monday morning.

11:29:31 6 COURT SECURITY OFFICER: All rise.

11:29:56 7 (Jury out.)

11:29:56 8 THE COURT: Does Plaintiff have anything that  
11:29:58 9 needs to be raised with the Court before we recess?

11:30:00 10 MR. SHEASBY: Nothing for Plaintiffs, Your Honor.

11:30:04 11 MR. HILL: No, sir, Your Honor.

11:30:05 12 MR. MELSHEIMER: Save travels, Your Honor.

11:30:07 13 THE COURT: All right. Counsel, I'll be in  
11:30:08 14 chambers by 7:30 Monday morning. I encourage you to meet  
11:30:13 15 and confer over any issues so that we can minimize any  
11:30:13 16 disputes.

11:30:14 17 We took a lot of time today. That's why we didn't  
11:30:17 18 start at 8:30, but closer to 9:00 o'clock. I am going to  
11:30:22 19 try and insist that we do a more efficient job so that we  
11:30:26 20 can start closer to 8:30 when we begin again next week.

11:30:30 21 With that, have a good weekend. We stand in  
11:30:35 22 recess until Monday morning.

11:30:38 23 COURT SECURITY OFFICER: All rise.

24 (Recess.)

25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/20

11/1/19  
Date